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LAW OFFICES

from the desk of
Timothy L. Fleming
Kent W. Day

December 18th, 2019

STEPHEN F. HERZOG
BANNOCK COUNTY PROSECUTOR
P.O. Box P
5500 S 5th Avenue
Pocatello, Idaho 83205
Fax: 208-236-0689

re: Marsh Valley School District #21
Formal Complaint: Open Meeting Law Violation – Transparent and Ethical Government

Dear Mr. Herzog:

On behalf of my client, Idaho Education News, I believe that the Marsh Valley School District #21 Board of Trustees violated Idaho's open meeting laws in discussing and determining to extend the Superintendent's employment contract in an executive session on December 10th, 2019.

Attached herewith please find as "Exhibit A" the agenda for Marsh Valley Joint School District #21's December 10th, 2019 board of trustees meeting. The meeting agenda provides notice that the Board will be entering into executive session pursuant to Idaho Code §74-206(1)(b), and Idaho Code §74-206(1)(j).

I have also attached as "Exhibit B" the draft minutes from the meeting, which clearly memorializes that the Board decided in executive session to extend the Superintendent's contract and approve a salary increase. *See the paragraph Superintendent Evaluation.*

As you are aware, both subjects are required under Idaho Law to be discussed and decided in an open meeting. It is clear from these minutes and the agenda that the Board violated Idaho's Open Meeting Laws.

Specifically, the Board of Trustees made decisions on the Superintendent's contract and salary that were not properly listed on the December 10th 2019 published agenda. Moreover, the decision was made in executive session and there was no further discussion or decision regarding these matters in open session. The community was simply advised of the decision made in executive session by Board Chairman Mr. Nelsen of the decision to give a pay increase and extend the contract.

Fleming Law Offices, PLLC
P.O. Box 814
1312 S. Washington, Suite E
Emmett, Idaho 83617

Office: (208)365-9400
Fax: (208)365-0690
timfleminglaw@gmail.com
kent.day@fleminglawofidaho.com

These are not minor violations. These violations have broader and more serious policy implications that if not addressed, could seriously impair the public's right to open and transparent government, as guaranteed by Idaho Code §74-201's provision "that the formation of public policy is public business and shall not be conducted in secret."

The agenda should have 1) referenced an action item to discuss the Superintendent's contract and 2) the Superintendent's compensation.

A patron in the Marsh Valley School District interested in the Superintendent, his compensation or employment contract would have had no idea that on December 10th, 2019 the Board of Trustees were going to meet and approve a contract extension and pay increase based upon the published agenda.

One of the most significant responsibility that a School Board has is evaluating the Superintendent and setting his salary and compensation. It must be done in an open and transparent manner, consistent with Idaho's Open Meeting Laws.

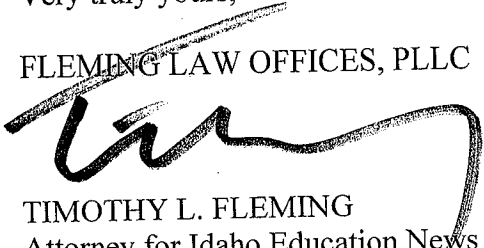
Unfortunately, based upon the record that exists, it is clear that the Marsh Valley School District #21 Board of Trustees did not meet the expected legal requirements and community expectations in this secretive process.

Please consider this a formal complaint and we ask that you take immediate action to further investigate this matter. The Board's actions of December 10th, 2019 must be corrected as provided in Idaho Code §74-208.

Thank you for your consideration of this matter. Idaho Education News takes very seriously instances where it believes that a governmental agency (knowingly or unknowingly) engages in action that deprives the public of full transparency in a process to make a decision.

Very truly yours,

~~FLEMING LAW OFFICES, PLLC~~



TIMOTHY L. FLEMING
Attorney for Idaho Education News

TLF/tcb

cc: client

Marsh Valley Joint School District #21
December 10, 2019
District Board Room

6:00 pm

- I. **EXECUTIVE SESSION-** per Idaho Code 74-206 (1)(b) and (j)
- a. **I.C. 74-206 (1) (b)** *To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent*
 - b. **I.C. 74-206 (1) (j)** *To consider labor contract matters authorized under section 74-206(1)(a) and (b), Idaho Code.*

Regular Board Meeting 7:00 p.m.

II. **CALL MEETING TO ORDER**

- a. Determine if quorum is present.
- b. Approve agenda

III. **PLEDGE OF ALLEGIANCE**

IV. **INFORMATION ITEMS/REPORTS/COMMUNICATIONS-**

- a. Welcome Delegates and Visitors
- b. Trustee Report
- c. Superintendent Report

V. **PATRON INPUT –**

Received Requests to Address the Board of Trustees – Board Clerk

NOTE: The Request to Address the Board Form can be found at mvsd21.org under the tab Board Meeting Information. Completed forms must be submitted by noon on the Thursday preceding the board meeting. The purpose of board meeting is to address board member's concerns and items that require the board's action. Patrons are encouraged to take special issues to their board member prior to board meetings. Three minutes will be given to those patrons granted time to address the Board of Trustees.

VI. **ACTION ITEMS-** *the board may take action to approve, deny, amend, modify or postpone action on any of the items listed below*

- a. Approve Minutes of Regular Board Meeting Nov 12, 2019
- b. Approve Bills
- c. Superintendent evaluation
- d. Bus bids
- e. Canvass Trustee election
- f. Resignations
- g. New Hires

VII. **ADJOURN**

EX A

MARSH VALLEY SCHOOL DISTRICT #21
Minutes of the Regular Board Meeting
Held December 10, 2019

At 6:00 pm Chairman Nielsen called the meeting to order. A quorum was established. Trustee Fannesbeck motioned that the board enter into executive session per state statute 74-206 (1)(b) and 74-206 (1)(j) to discuss personnel issues, Trustee Egan seconded the motion. A roll call was conducted; Trustees Kathy Egan, Kevin Fannesbeck, Roger Morris and Brad Sutton, and Chairman Nielsen were in attendance. Minutes were recorded by Connie Neeser. Personnel issues were discussed. No motions taken

At 7:00 pm Chairman Nielsen resumed the Board Meeting. He welcomed all guests and thanked them for attending. Superintendent Marvin Hansen joined the meeting and the previously mentioned board members were also in attendance.

Trustee Kevin Fannesbeck led the recited the Pledge of Allegiance.

Trustee Fannesbeck moved to accept the agenda as written. Trustee Egan seconded - motion carried unanimously with five yea votes.

Chairman Nielsen asked the trustees if they had anything to report. The Trustees did not have anything to report.

Chairman Nielsen turned the time over to Superintendent Hansen. Superintendent Hansen reported that most of the schools are having Christmas programs and invited the Trustees to attend. Superintendent Hansen also reviewed a data sheet he had received from ISU providing the number of Dual Enrollment students and courses that schools in S.E. Idaho are participating in. Marsh Valley School District has 60 students enrolled for courses providing 265 credits. Superintendent Hansen mentioned that additional courses are provided by U of I and CSI. The cost for these courses is subsidized by the State Department of Education.

Action Items

Approve Board Minutes. Trustee Sutton moved to approve the minutes of the regular board meeting held on November 12, 2019 as written. Trustee Egan seconded the motion. Motion carried unanimously with five yea votes.

Approve Bills. After a brief discussion regarding the number of families receiving In Lieu of Transportation, Trustee Fannesbeck moved to approve the bills and vouchers in the amount of \$784,362.97 as listed. Trustee Sutton seconded - motion carried unanimously with five yea votes.

Superintendent Evaluation. Chairman Nelsen mentioned that the Superintendent's evaluation was conducted a month early. He explained that the evaluation was completed early this year as per a recommendation from the Idaho School Board Association. This was the first year the school board elections were held in November (they were previously held in May) the new board members will be sworn into office in January instead of being sworn into office in May as it was previously done. In the past the board had worked with the Superintendent for months prior to the evaluation in January. The Superintendent will receive a salary increase and a contract extension (making his contract 3 years) effective July 2020.

Bus Bids. Transportation Supervisor, Charlie Sorensen reviewed the bids that were received for two new buses. Three bids were received; however, one of the bids from Rush Equipment for an International Bus was received after the 10:00 am deadline (it arrived around 1:00 pm). The two bids received on time were from Bryson Sales for a Bluebird bus and Western Mountain Bus for a Thomas bus. Bryson Sales offered a price of \$101,670 per bus and Western Mountain offered a price of \$95,482 per bus. Western Mountain also offered a higher trade in amount. After a discussion on trade in options and bus quality, Trustee Egan moved to accept the bid from Western Mountain

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Bus Sales and that we purchase two school buses from them for the total amount of \$175,164 (which includes the trade in offer). Trustee Morris seconded - motion carried unanimously with five yea votes.

Canvas of Trustee Election. The Bannock County Election Officials have approved the ballots for the 2019 School Board Elections.

Resignation. We received a resignation from Barbara Olsen, secretary at the middle school. Trustee Morris moved to approve the resignation. Trustee Egan seconded - motion carried unanimously with five yea votes.

New Hires. Trustee Fonnsebeck moved to approve the hiring of the following coaches. Trustee Sutton seconded. Each coach was voted on separately.

- Adam Hadley as the 7th grade Boys Basketball Coach, approved unanimously with five yea votes.
- Jacob Kay as the 8th grade Boys Basketball Coach, approved unanimously with five yea votes.
- Tyson Gunter as the Head Track Coach, approved unanimously with five yea votes.
- Devin Shurtliff as the Head Boys Soccer Coach, approved with four yea votes, Trustee Morris abstained.
- Rachelle Gilbert as the Head Girls Soccer Coach, approved unanimously with five yea votes.
- Kimberly Call as the Head Volleyball Coach, approved unanimously with five yea votes.

Doug Armstrong was proposed as the Head Football Coach. Trustee Sutton indicated he had received concerns and that he didn't know how well the concerns had been investigated. Trustee Sutton stated he had heard from a couple of parents and he had an assistant coach come to him expressing concerns of things that went on among the team, he wanted to verify they had been addressed. The Athletic Director Logan Kent responded that he had evaluated the coaches and he had met with each coach to address the concerns he had heard. Trustee Sutton asked Mr. Kent if Jay Roach had contacted him regarding a concern. Mr. Kent stated he had not received any concerns from Mr. Roach and Mr. Roach had been out of town when the coaches meeting occurred. Trustee Sutton verified a second time that Mr. Roach had not talked to Mr. Kent. Mr. Kent verified he had not heard from him. Trustee Egan stated she had received concerns regarding language used by coaching staff and asked Mr. Kent if he had heard that complaint. Mr. Kent stated that concern had not been brought up to him. Trustee Sutton stated he felt he could not support Coach Armstrong until he knew Jay Roach's concern had been addressed. Trustee Fonnsebeck asked Trustee Sutton if the questions had been directed to the Athletic Director. Trustee Sutton indicated he had asked a couple of parents to call the Athletic Director directly. Athletic Director Logan Kent stated he had received two letters of concern. Doug Armstrong was approved with four yea votes. Trustee Sutton voted against the motion to hire.

January Meeting Agenda. Trustee Sutton proposed a motion to place Shaun Jones on the agenda in January 2020 to discuss In Lieu of Transportation. Trustee Egan seconded the motion. Chairman Nielsen asked for a vote - motion passed with four yea votes. Chairman Nielsen voted against the motion.

At 7:45 pm Trustee Morris moved to adjourn. Trustee Fonnsebeck seconded - motion carried unanimously with five yea votes

Chairman

Clerk