

Broadwater County Attorney

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January 3, 2025

Kevin Downs
Lewis and Clark County Attorney
Lewis and Clark County Attorney's Office
228 Broadway St.
Helena, MT 59601

Re: Evaluation of petitions related to the board of the Canyon Creek Rural Fire District, CCRFD
Redress Petitions 1-12

Dear County Attorney Downs,

Due to the potential that an attorney from your office would have a conflict of interest in reviewing the petitions, your office sought review by a prosecutor in another jurisdiction per § 7-1-206(1)(b), MCA. As the Deputy Broadwater County Attorney, I reviewed the twelve (12) petitions to determine whether each petition had merit. The allegations contained in the petitions were that the board has not complied with statutes applicable to the governance, operation, and function of the board of the Canyon Creek Rural Fire District (CCRFD) according to Montana law and the bylaws of the CCRFD.

My findings for each of the petitions are as follows:

Petition 1. The claim that the rescheduled meetings did not meet the required public notice per § 2-3-103, MCA, is supported by the evidence. Specifically, there is no evidence that the procedures for publishing notice were followed for a number of meetings where "the agency shall provide adequate notice of a meeting by doing at least one of the following: (A) posting a link to the meeting agenda on the agency's primary website; or (B) posting the agenda on the social media site of the agency." Mont. Code Ann. § 2-3-103.

Petition 2. The claim that agenda items were drafted by Trustees then submitted to the Chairman for inclusion on the agenda, but were not included on the agenda by the Chairman, is supported by the evidence.

Petition 3. The claim that the CCRFD Board disregarded public participation by not utilizing procedures to "ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public," § 2-3-103, MCA, is supported in part and not supported in part by the evidence.

Evidence attached to the petition indicates the agenda for the Monday, September 9, 2024, CCRFD Special Board meeting contained agenda items related to the "Discussion and decision by the CCRFD Board of Trustees on the continued appointment of the Fire Chief..." However, it is unclear if the chairperson provided the members with at least two days advanced notice or if the agenda was posted as required by law per § 2-3-103, MCA.

Regarding the Saturday, September 21, 2024, Rescheduled Regular Meeting, the agenda includes numerous "discussion and decision" items under the New Business section of the agenda

which relate to taking action regarding the Fire Chief. As noted above, it is unclear if the chairperson provided the members with at least two days advanced notice or if the agenda was posted as required by law per § 2-3-103, MCA.

Petition 4. The claim that the proposed changes to the Standard Operating Guidelines (SOGs) were not posted prior to the meeting and were not available to meeting participants other than those in attendance is a likely violation of § 2-3-111, MCA, which provides that “procedures for assisting public participation must include a method of affording interested persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision that is of significant interest to the public.” Mont. Code Ann. § 2-3-111. The claim is supported by the evidence included in the petition.

Petition 5. The claim that the CCRFD Board failed to provide “any reasonable amount of time for public feedback” or the opportunity to “provide any public feedback” after an amendment was introduced to the SOGs is a likely violation of § 2-3-111, MCA. Furthermore, the evidence suggests that the CCRFD Board violated § 2-3-103, MCA, by taking action on a matter discussed where public comment was not allowed on that matter.

Petition 6. The claim that agendas for meetings were posted without “an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting,” § 2-3-103, MCA, is supported by the evidence and a likely violation of the same statute.

Petition 7. The claim that a revised agenda was not provided in advance of the Monday, August 19, 2024 meeting is supported by the evidence and a likely violation of § 2-3-103, MCA, which calls for “procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public...[and] ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public.”

Petition 8. The claim that email conversations constituted a meeting because there was a “convening of a quorum of the constituent membership of a public agency or association described in 2-3-203, whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power,” § 2-3-202, MCA, is supported by the evidence. Meetings conducted via email would violate § 2-3-203, MCA, which states that “(1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public.” Mont. Code Ann. § 2-3-203(1).

Petition 9. Evidence supporting the claim that “the CCRFD Board has put Mutual Aid at risk” was not attached to the petition. However, if writings submitted to the CCRFD Board or recordings of the public comments on the matter are provided, that evidence may support the claim.

Petition 10. The claim that agenda items were drafted by Trustees then submitted to the Chairman for inclusion on the agenda, but were not included on the agenda by the Chairman, is supported by the evidence.

Petition 11. The claim that applicants and interested persons were not given any reasonable amount of time to provide public comment on the appointment of a new Fire Chief is supported by the evidence included in the petition. Failure to provide applicant information ahead of the Monday, October 7, 2024, Special Board Meeting likely did not honor the “procedures for assisting public participation must include a method of affording interested persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision that is of significant interest to the public.” Mont. Code Ann. § 2-3-111.

Petition 12. The statute cited in the petition identifies that “A person may be removed from an administrative board, a district board, or a commission for cause by the county commissioners or as

provided by resolution.” Mont. Code Ann. § 7-1-201(13). The request made in the petition should be forwarded to the county commissioners for appropriate consideration.

Based on the findings listed above which found that the claims in Petitions 1-11 were supported by the evidence and likely have merit, the CCRFD Board should participate in training provided by the local government center as provided in § 7-1-206(2), MCA. The request made in Petition 12 may require additional action or consideration by the county commissioners. Please do not hesitate to reach out with additional inquiries or questions for this office.

Sincerely,

A handwritten signature in black ink that reads "Kaylan Minor". The signature is written in a cursive, flowing style.

Kaylan Minor

Deputy Broadwater County Attorney

Cc: nhash@lccountymt.gov

