

STATE OF SOUTH DAKOTA
DENNIS DAUGAARD, GOVERNOR

April 8, 2013

The Honorable Marty Jackley
South Dakota Attorney General
1302 East Highway 14
Pierre, SD 57501

Dear Attorney General Jackley:

On March 18, 2013 in the United States District Court, District of South Dakota, a Grand Jury Subpoena was served on the Custodian of Records for the Governor's Office of Economic Development. A copy of that Grand Jury Subpoena is enclosed (Attachment 1). The Grand Jury Subpoena requested copies of records relating to eight different items. In reviewing the records and in order to comply with the Subpoena, I have concluded that there are some items that may merit your inquiry and follow-up.

Included with this letter are two different travel vouchers – one dated December 14, 2009, (Attachment 2) and the other dated March 10, 2010 (Attachment 3). The December 14, 2009 voucher includes on page 2 a November 1, 2009 NWA ticket to China EB-5 in the amount of \$982.90 and a December 8, 2009 NWA ticket to China EB-5 in the amount of \$3,740.60. Attached to that voucher are the supporting documents for reimbursement which include a copy of a credit card statement regarding the November 1, 2009 NWA ticket in the amount of \$982.90 and a flight purchase confirmation from Northwest Airlines in the amount of \$3,740.60.

Included as Attachment 3 is a copy of the March 10, 2010 voucher. On page 2, this voucher contains a notation from November 1, 2009 regarding a NWA ticket from Sioux Falls to Beijing (Peking) in the amount of \$982.90, and on page 3, it likewise contains a notation from December 8, 2009 regarding a NWA ticket from South Dakota to China in the amount of \$3,740.60. Accompanying this voucher is a credit card statement with a November 1, 2009 notation in the amount of \$982.90 that is duplicative of the credit card statement in the December 14, 2009 voucher. In addition, the supporting documents for the March 10, 2010 voucher include a credit card statement with a transaction date of December 10, 2009 in the amount of \$3,740.60 for a Northwest Airline ticket.

Attorney General Jackley

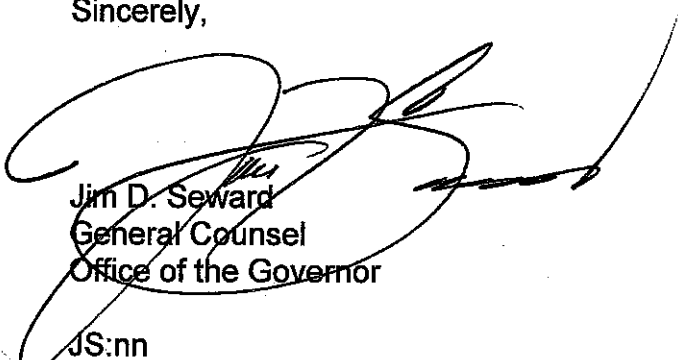
April 8, 2013

Page 2

I believe this is a matter that merits an investigation. The Governor's Office of Economic Development is cooperating with the investigation being conducted by the United States Attorney's Office for the District of South Dakota. I will provide you with a copy of the items being provided pursuant to the federal Grand Jury Subpoena. Please let me know if there are any additional items you want.

Thank you for your attention to this matter.

Sincerely,

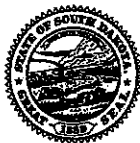


Jim D. Seward
General Counsel
Office of the Governor

JS:nn

Enclosures (3)

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
www.state.sd.us/atg

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

October 11, 2013

TO: Grand Jurors

RE: Grand Jury Proceedings

Your panel has been summoned to come to a special session of grand jury. The session has been scheduled for **MONDAY, October 28, 2013, beginning at 9:00 a.m.** We need a quorum of your grand jury panel to conduct the business of the grand jury. If you have a scheduling conflict, please notify our office as soon as possible.

If you have questions regarding this correspondence, please contact our office at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Brent Kempema".

Brent Kempema

Assistant Attorney General

**STATE OF SOUTH DAKOTA
COUNTY OF HUGHES**

**ss. IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT**

STATE OF SOUTH DAKOTA,

Plaintiff,

vs.

RICHARD L. BENDA,
DOB: 02/18/1954,

Defendant.

CRIM. NO. _____

COMPLAINT

The undersigned, being duly sworn upon his oath, charges that between December 28, 2010, and January 26, 2011, in the Counties of Hughes and Brown, State of South Dakota, Richard L. Benda did commit the public offenses of:

COUNT 1A

AGGRAVATED GRAND THEFT BY EMBEZZLEMENT, in violation of SDCL 22-30A-2, 22-30A-10, and 22-30A-17.1, a Class 3 felony, in that, with intent to defraud, he appropriated money belonging to the State of South Dakota entrusted to him to a use and purpose not in the due and lawful execution of his trust, to wit: Richard L. Benda obtained \$550,000 in state funds by diverting economic development grant funds intended for the benefit of Northern Beef Packers, LP to his own use and purpose; or in the alternative

COUNT 1B

AGGRAVATED THEFT BY DECEPTION, in violation of SDCL 22-30A-2, 22-30A-3(1) and 22-30A-17.1, a Class 3 Felony, in that, with the intent to defraud, he obtained the property of another by deception by creating or reinforcing a false impression, to wit: Richard L. Benda obtained \$550,000 from Northern Beef Packers, LP by creating the false impression that he had the authority to withhold \$1,000,000 in grant funds due to Northern Beef Packers, LP unless \$550,000 of those funds were paid to Richard L. Benda through South Dakota Regional Center, Inc. for loan monitoring services not yet rendered; or in the alternative

COUNT 1C

AGGRAVATED GRAND THEFT BY THREAT in violation of SDCL 22-30A-2, 22-30A-4(4), and 22-30A-17.1, a Class 3 Felony, in that he did obtain property of another by threatening to take or withhold action as an official, or cause an official to take or withhold action, to wit: between December 28, 2010, and January 26, 2011, Richard L. Benda, while holding himself out as an official or as a person who could cause an official to take or withhold action, did obtain \$550,000 from Northern Beef Packers, LP by threatening to cause harm to Northern Beef Packers, LP by withholding \$1,000,000 in grant funds from Northern Beef Packers, LP unless \$550,000 of those funds were paid to him through South Dakota Regional Center, Inc. for loan monitoring services not yet rendered;

COUNT 2

GRAND THEFT in violation of SDCL 22-30A-2 and 22-30A-17(1), a Class 3 Felony, in that, with the intent to benefit himself, he transferred property of the State of South Dakota to himself, though he was not entitled thereto, to wit: Richard L. Benda, between December 14, 2009, and on or about April 16, 2010, did obtain from the State of South Dakota the sums of \$982.90, \$3,740.60, and \$836.30 to which he was not entitled by preparing and filing duplicate vouchers for reimbursement for these travel expenses despite having earlier received reimbursement for those same expenses from the State of South Dakota;

All contrary to the statutes in such case made and provided against the peace and dignity of the State of South Dakota.

That this Complaint is based on the Affidavit of Jason Jares, a copy of which is attached hereto and fully incorporated herein.

Dated this ____ day of October 2013 at Pierre, South Dakota.

MARTY J. JACKLEY
ATTORNEY GENERAL

Brent K. Kempema
Paul S. Swedlund
ASSISTANT ATTORNEYS GENERAL

Subscribed and sworn to before me, a Notary Public, on this ___ day of
October 2013.

Notary Public
My Commission Expires:_____

(SEAL)

REQUEST FOR WARRANT OF ARREST

The undersigned prosecuting attorney, hereby requests that a Warrant of
Arrest be issued based upon the Complaint set forth hereinabove.

MARTY J. JACKLEY
ATTORNEY GENERAL

Brent K. Kempema
Paul S. Swedlund
ASSISTANT ATTORNEYS GENERAL

**STATE OF SOUTH DAKOTA
COUNTY OF HUGHES**

**ss. IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT**

STATE OF SOUTH DAKOTA,
Plaintiff,

vs.

RICHARD L. BENDA,
SSN:
DL#
DOB: 02/18/1954
LKA:

Defendant.

CRIM. NO. _____

WARRANT OF ARREST

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE:

Complaint upon oath having been this date laid before me that the crimes of:

AGGRAVATED THEFT BY DECEPTION, in violation of SDCL 22-30A-3(1) and 22-30A-17.1 as a Class 3 Felony; and

AGGRAVATED THEFT BY THREAT, in violation of SDCL 22-30A-4(4) and 22-30A-17.1 as a Class 3 Felony

have been committed and accusing RICHARD L. BENDA, thereof;

You are therefore commanded forthwith to arrest the above-named

RICHARD L. BENDA, and bring him before me at the courtroom in the Hughes County Courthouse, at Pierre, South Dakota, or in the case of my absence or inability to act, before the nearest or most accessible Magistrate.

Bond in the above matter shall be set at \$_____.

This Warrant of Arrest may be served at any time of the day.

Dated this ____ day of October 2013 at Pierre, South Dakota.

(Circuit Court Judge) (Magistrate)

**STATE OF SOUTH DAKOTA
COUNTY OF MINNEHAHA**

ss.

I hereby certify that a copy of the above Warrant of Arrest was received by me on the ___ day of October 2013. I executed the same on the ___ day of October 2013 by delivering a copy to _____.

Law Enforcement Officer

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501

Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
www.state.sd.us/atg

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

November 21, 2013

Governor Dennis Daugaard
Office of the Governor
500 E. Capitol
Pierre, SD 57501

Dear Governor Daugaard,

Pursuant to your request of April 8, 2013, the Attorney General's Office has investigated allegations of individual financial misconduct involving reimbursement vouchers in the Governor's Office of Economic Development. This investigation was conducted pursuant to SDCL 1-11-1(2) and (9).

The Attorney General's investigation of the travel vouchers revealed evidence of double billing and double recovery on two sets of documents. First, vouchers dated December 14, 2009, and March 11, 2010, revealed double billing and payment for:

November 1, 2009	NWA ticket to China EB-5	\$ 982.90
December 8, 2009	NWA ticket to China EB-5	\$3,740.60

Second, vouchers dated March 11, 2010, and April 16, 2010, revealed double billing and payment for:

January 11, 2010	NWA ticket to Las Vegas Shot Show	\$836.30
------------------	-----------------------------------	----------

Because the individual who submitted the vouchers is deceased, there will be no further action by the Attorney General's Office on the voucher matter.

The Attorney General's review further disclosed financial concerns related to a one million dollar Future Fund Grant to assist Northern Beef LP. On September 28, 2005, Northern Beef LP was formed to develop and construct a

large beef processing plant on land near Aberdeen. Ownership of Northern Beef was transferred to a new group of federal EB-5 investors on or about January 8, 2008, eventually including South Korean investors.

On or about December 8, 2010, the South Dakota Department of Tourism agreed to issue payments on a reimbursement basis for construction or equipment costs not to exceed one million dollars to Northern Beef Packers LP. In late January of 2011, State check #99697504 in the amount of one million dollars was issued and delivered to Northern Beef Packers LP. However, \$550,000 of said one million dollars was redirected from its intended purpose and purportedly used to pre-pay EB-5 loan monitoring fees for the South Dakota Regional Center, Inc. (SDRC). SDRC utilizes the services of the California and South Korea based law firm Hanul Professional Law Corporation to identify and recruit potential federal EB-5 investors to process the required U.S. Citizenship and Immigration Services documentation.

Because the EB-5 Program is a federal immigration program run and controlled by federal immigration authorities, the United States Attorney and the Department of Justice have primary authority over federal immigration law and the EB-5 Program. I will naturally continue to assist federal authorities regarding these concerns including the impropriety of the payment of the \$550,000 loan monitoring fees toward a federally EB-5 funded project.

To the extent any of these matters are disclosed, it is important to remember that no charges have been filed by state or federal authorities. Thus, the safeguards and protections of the criminal process – including the presumption of innocence and the requirement that the government prove each and every element of a crime beyond a reasonable doubt – are implicated.

Governor, to the extent you have any questions or desire any further review consistent with SDCL 1-11-1, please don't hesitate to contact me.

Sincerely,



Marty J. Jackley
ATTORNEY GENERAL

MJJ/ldé

cc: Paul Bachand, GOED Counsel
Brendan Johnson, US Attorney
Jim Seward, Governor's General Counsel

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
www.state.sd.us/atg

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

January 9, 2014

Dear Editor,

As Attorney General, I would like to take this opportunity to explain law enforcement's collective work investigating both the death of former Secretary of Tourism Richard Benda and the Governor's Office of Economic Development (GOED).

In the spring of 2013, the Attorney General began a criminal investigation into potential financial misconduct at GOED. That has involved review of thousands of pages of voluminous financial records including personal bank records, loan documentation, correspondence, e-mails, as well as witness interviews, preparation of criminal process documentation, and meetings with retained defense counsel. On November 21, 2013, I advised the Governor that the investigation revealed evidence of three instances of double recovery on vouchers. I further advised of the discovery of additional financial concerns related to a one-million dollar Future Fund grant.

The investigation revealed that in late January of 2011, a one million dollar check was issued by the State and delivered to Northern Beef Packers for reimbursement for the plant's construction or equipment costs. \$550,000 of that one million dollars was then used to pre-pay EB5 loan monitoring fees. While South Dakota law limits disclosure of a criminal investigation, the facts surrounding the Future Fund grant and vouchers as reported by journalist Bob Mercer would not support a state criminal action regarding either the vouchers or the \$550,000 transaction in that the individual alleged to be involved is now deceased. Because the EB5 program is a federal immigration program, the Attorney General also provided its findings to federal authorities as well as to GOED that retains its own private attorneys to provide legal advice separate from the Attorney General.

On October 22, 2013, state, federal and local law enforcement authorities responded to Richard Benda's death in rural Charles Mix County, secured the scene and preserved all items deemed to have potential evidentiary value for the determination of the cause and manner of death. On November 20, 2013, the Minnehaha County Forensic Pathologist issued an autopsy report indicating that in his opinion the cause of death was "shotgun wound to the abdomen" and manner of death "suicide." The very next day, I released the forensic pathologist's findings, as well as a summary of the Attorney General's investigation results. I informed the public that the investigation scene reconstruction, interviews conducted, evidence collected at the scene and law enforcement forensic testing did not indicate foul play and were consistent with the independent forensic pathologist's ruling that the death was a result of a suicide. The law enforcement forensic testing included firearm functioning, ballistic testing, DNA and fingerprinting. On November 27, 2013, the County Coroner issued his official Certificate of Death stating: "decedent secured shotgun against tree, used a stick to press trigger to shoot himself in abdomen."

As Attorney General, I am proud of the work and the cooperative efforts of the investigators and prosecutors during these investigations. I have strived to support open government by forming the Governor and Attorney General's Joint Task Force on open government, supporting media in the courtroom on trials I prosecute, dedicating an open meeting posting on the Attorney General's website, and working to allow public access with the State Automated Victim Notification System. Within the boundaries of the law in the Benda matter, I have informed the public of the cause and manner of the tragic death, as well as our uncovering of financial misconduct. However, the Legislature and our courts have set forth limitations on a prosecutor's ability to release certain sensitive private information, and I do believe that the protections provided by our criminal laws and a family's privacy are worthy considerations. Further information should be disclosed by following proper procedures including through the Legislative Audit and the courts, which are all occurring, but

not as some suggest dangerously giving prosecutors unlimited authority to release criminal investigations that often involve innocent witnesses or suspects.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marty J. Jackley".

Marty J. Jackley
ATTORNEY GENERAL

MJJ/lde