

From: Steven Sanford ssanford@cadlaw.com
Subject: FW: In The Matter Of The Investigation Of The Conduct Of Representative Mathew Wollman - subpoena to KSFY-TV
Date: Jan 24, 2017, 7:39:21 AM
To: Julie Bartling Julie.Bartling@sdlegislature.gov, Mary Duvall Mary.Duvall@sdlegislature.gov, Spencer Hawley Spencer.Hawley@sdlegislature.gov, David Lust David.Lust@sdlegislature.gov, Steven McCleerey Steven.McCleerey@sdlegislature.gov, Larry Rhoden Larry.Rhoden@sdlegislature.gov, Karen Soli Karen.Soli@sdlegislature.gov, Mike Stevens Mike.Stevens@sdlegislature.gov
Cc: Timothy Johns Timothy.Johns@sdlegislature.gov

Dear Representatives:

Below is the email message I sent last night to Representative Johns on behalf of KSFY TV in response to the subpoena served yesterday. I apologize for not including you, but was out of the office when I sent it and did not have the committee list then. If something more formal needs to be sent or filed, please advise and I will take care of it. Thank you.
SWS

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From: Steven Sanford
Sent: Monday, January 23, 2017 [8:45 PM](#)
To: timothy.johns@sdlegislature.gov
Subject: FW: In The Matter Of The Investigation Of The Conduct Of Representative Mathew Wollman - subpoena to KSFY-TV

Dear Representative Johns:

I represent television station KSFY-TV in Sioux Falls. Please direct all further communication in this matter to my attention.

KSFY forwarded to me the Legislative Subpoena *Duces Tecum* served on it this afternoon in connection with the House Select Committee on Discipline and Expulsion's investigation of the conduct of former Representative Mathew Wollmann. The subpoena specifies that KSFY is to produce "any electronic video or audio recording in its unedited form of any interview of Intern John or Jane Doe discussing any alleged misconduct by Representative Mathew Wollmann or other members of the Legislature that is in your or KSFY's Television's possession" for a hearing to be conducted by the Select Committee tomorrow at 3 p.m.

As an initial matter, the House Select Committee on Discipline and Expulsion does not have the authority to subpoena KSFY. The House Rules, which the subpoena invokes, governs the conduct and operations of House Members during each session. Undoubtedly, the Select Committee can require Members and staff to comply with a legislative subpoena. However, nothing in the rules, South Dakota statutes, or the South Dakota Constitution provides the House or this Select Committee with the authority to compel citizens not employed by the House to appear and surrender their property in response to a subpoena issued under the House Rules.

Moreover, the subpoena specifically seeks a journalist's unpublished information from a confidential source. The right of journalists to protect their sources from compelled disclosure to the government is clearly established under South Dakota law and the First Amendment to the U.S. Constitution. See *Hopewell v. Midcontinent Broad. Corp.*, 538 N.W.2d 780 (S.D. 1995). The subpoena threatens the independence of the a free press, and its ability to provide information to the public without government impediment, that the journalist's privilege is designed to protect.

The importance of preserving that independence, and preventing journalists from becoming conscripted investigators for the governments, is amply illustrated in this instance. Here, the Select Committee is investigating the conduct of a former House

Member, staffers and interns, and potentially other House Members. The Select Committee therefore has complete access to all people who may have knowledge of the matters under investigation. There is simply no need, with the information at its disposal, for the Select Committee to violate South Dakota law and the First Amendment by attempting to force journalists to reveal a source.

KSFY therefore will not produce the confidential, privileged newsgathering material that the Select Committee has subpoenaed, and the station will not appear at the hearing scheduled for tomorrow at 3 p.m. Further, we respectfully request that you withdraw the subpoena immediately.

If the Select Committee decides not to withdraw the subpoena, please contact me so that we may involve the Attorney General's Office in these discussions, and determine the most orderly fashion to bring this matter before the Court.

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