SOUTH DAKOTA OPEN MEETING COMMISSION

STATUS OF PROCEEDINGS

December 11, 2012

Since its inception in 2004 the following cases have been referred to the Open Meeting Commission (OMC) by States Attorneys under SDCL 1-25-6.

City of Lead (04-01). Paul Holtsclaw filed this Complaint with the Lawrence County State's Attorney. It involved three items. The OMC found that while personnel matters are properly a matter of executive session, an executive session cannot be used to discuss reorganizing the functions of various divisions in the city. Second, a meeting where the city considered whether a city employee had acted improperly was properly the subject of an executive session for personnel reasons. Third, any official action must be publicly noticed through the agenda process. A reprimand was issued.

South Dakota Science & Technology Authority. This Complaint was filed with the Lawrence County State's Attorney by South Dakotans for Open Government. The Complaint alleged that executive sessions conducted for discussing contracts were improper under the open meeting laws. The OMC held that discussion of contracts is not, in and of itself, adequate reason for executive session. A reprimand was issued. The OMC also explained that preparation for or participation in employee contract issues would be a proper matter for an executive session. Also, consultation with legal counsel or consideration of advice from legal counsel about contractual matters is proper for an executive session.

Town of Herrick (05-01). Charles Claussen filed this case with the Gregory County State's Attorney. The OMC held that the open meeting law pertains to all meetings, including special meetings and "old business." It applies even when the only item is an executive session item. The law requires votes to be made in an open meeting after the executive session is concluded. A reprimand was issued.

Davison County (05-02). Noel Hamiel, *Mitchell Daily Republic*, filed this Complaint with the Davison County State's Attorney. The OMC held that presentations or reports are to be heard in open session except for specific executive session matters. Regardless of whether an ad hoc task force suggests the executive session, the county is responsible for complying with the law. The county should have had someone separately review a task force report in advance to split the presentation into public and executive session matters. A reprimand was issued.

Gregory School Board (05-03). Mona Taggert filed this Complaint with the Gregory County State's Attorney. The OMC held that during an executive session, the board cannot deviate from the topic for which it called the executive session. Further, the topic for an executive session must be covered by one of the exceptions listed in the open meetings law. A reprimand was issued.

Faulkton Area School District (05-04). The Complaint was filed with the Faulk County State's Attorney by C. Jody Moritz, a teacher. The school board went into executive session to address personnel issues, but did not take official action later in open session. The District asserted that no vote was taken; the Complainant claimed that a vote was taken privately in executive session and resulted in contract termination of teachers. The interpretation involves consideration of SDCL 13-43-6.3, a statute pertaining to teacher contracts. The OMC held that no violation occurred since no vote was taken in executive session.

Arcade Township (05-05). This Complaint was filed with the Faulk County State's Attorney by Duane Martchinske. The Complaint, filed in December 2005, alleged that no agenda was posted for a meeting of Arcade Township. A reprimand was issued.

Rapid City Regional Airport Board (05-06). This Complaint was filed with the Pennington County State's Attorney by Linda Rydstrom, President of Westjet Air Center, Inc. It alleged the Airport Board wrongly conducted executive sessions during several meetings. The OMC held that executive sessions cannot be conducted for "contractual matters" unless the contractual matters otherwise fit one of the statutory exemptions for executive sessions. Further, including an interested party to a contract in an executive session was not proper. A reprimand was issued.

Lawrence County (05-07). Greg Nepstad, Assistant Chief of the Nemo Fire Department, filed this Complaint with the Lawrence County State's Attorney. The Complaint, filed in December 2005, alleges that Lawrence County violated the open meeting laws when it dissolved its Lawrence County Fire Advisory Board. The OMC found that no violation occurred.

Melrose Township I (06-01). Jerald Zubke, township citizen, filed this Complaint with the Grant County State's Attorney. The Complaint alleged that an executive session was improperly conducted. The OMC held that the executive session was conducted to discuss legal business with their attorney and the executive session was proper. The open meetings law allows for executive sessions for such legal discussions. No violation occurred.

Roberts County (06-02). Jerry Steinley with the *Watertown Public Opinion* filed this Complaint with the Codington County State's Attorney in March 2006. The

Roberts County Commissioners were invited to the Dakota Sioux Casino. Believing that they were only touring the casino, they did not post an agenda or otherwise comply with the Open Meeting Law. However, Tribal leadership asked the County Commissioners to discuss endorsing the Tribal government's proposal to increase Casino operations. Although the County Commissioners did not take action, the OMC held that a violation occurred because they listened to discussion regarding official matters.

South Dakota Board of Regents (06-02). Betty Breck filed this Complaint with the Hughes County State's Attorney. The Complaint alleged that the Board of Regents conducted meetings improperly, including executive sessions, in considering a Sioux Falls campus. The OMC found that the Board of Regents did not make an official decision to purchase land at a specific location without placing the item on an agenda. The official decision was actually made by the Legislature. The OMC found, however, that executive sessions discussing contractual matters related to the new campus did not fit the exemption for legal discussions and were improper. A reprimand was issued.

City of Tripp (06-04). This Complaint was filed with the Hutchinson County State's Attorney by Joseph Jackson, a former employee of the City of Tripp. The Complaint alleged several violations involving the Tripp City Council, including the failure to post agendas, failure to keep proper minutes, and failure to make minutes publicly available. The City failed to post agendas for several meetings. Further, the City held an executive session for a personnel matter and made an official decision while still in the executive session. Voting must occur in public. The OMC issued a reprimand.

Melrose Township II (06-05). Jerald Zubke, township citizen, filed this Complaint with the Grant County State's Attorney. The Complaint alleges that a quorum of the Melrose Township Board met without complying with the notice and posting requirements of the open meetings law. The township board met with the Grant County Commission. Even though the Grant County Commission complied with the notice and posting requirements, the open meeting laws required the township to also comply since a quorum of the township board met to discuss official business at the same time. A reprimand was issued. Note: the statutes at issue in this case have been changed; refer to SDCL 1-25-1.

Black Hawk Fire District (07-01). Raymond Reynolds, an interested citizen, filed this Complaint with the Meade County State's Attorney. The Complaint was filed September 2007. The OMC found that the Fire District failed to comply with issuing meeting notices specific to rural fire protection districts and, further, that the Fire District failed to comply with the posting requirement in SDCL 1-25-01.1. A reprimand was issued.

City of Watertown (07-02). The *Watertown Public Opinion* filed this Complaint with the Codington County State's Attorney. The Complaint, filed in September 2007, alleged that the City Finance Committee conducted a meeting without providing any notice to the public or posting any agenda. Oral presentations were heard in November 2007. The OMC held that no violation occurred because the Finance Committee was an advisory body only and was not itself subject to the open meetings law and a majority of the City Commissioners did not attend the meeting.

Brown County (07-03). Betty Breck filed this Complaint with the Brown County State's Attorney. The complaint alleged that Brown County failed to post an agenda of a meeting. Although the County published a newspaper notice, provided a copy of the agenda upon request, and did not appear to intentionally violate the law, SDCL 1-25-1.1 was violated. A reprimand was issued.

Minnehaha County (07-04). Jeff Barth, a County Commissioner, filed this Complaint with the Minnehaha County State's Attorney. The Complaint, filed in December 2007, alleged that three members of the County Commission held an informal meeting without complying with the open meetings law. The OMC issued a reprimand.

USD Student Government Association (07-05). Justin Wolfgang, editor of the *Volante*, filed this Complaint with the Clay County State's Attorney. The Complaint claimed that the USD Student Government Association violated the open meetings law. Oral presentations were held on July 31, 2008. The OMC found that the Student Government Association was not subject to the open meetings law.

City of Mitchell (08-01). The *Mitchell Dailey Republic* filed this Complaint with the Davison County State's Attorney. The Complaint, filed in June 2008, claimed that the Mitchell City Council violated the open meetings law by holding an executive session with the City Attorney when it discussed general legal matters that included more than just litigation or contracts as contemplated by SDCL 1-25-2. Oral presentations were held on July 31, 2008. The OMC held no violation occurred because it involved a meeting with counsel for privileged communications.

Kingsbury County (08-02). This Complaint was filed with the Kingsbury County State's Attorney by Jerry Ellingson, a County Commissioner. The Complaint, filed in July 2008, asserted that Kingsbury County violated the open meetings law. The OMC held that a violation occurred when the auditor met with three Commissioners to generally review the county's revenue information in a listening session and no specific budget items were discussed. The meeting was held without posting an agenda or otherwise complying with the open meeting laws.

Brown County (08-03). Betty Breck filed this Complaint with the Brown County State's Attorney. The Complaint, filed in September 2008, claims that the Brown County Commission violated the open meeting law with respect to posting an agenda. The agenda was posted backwards and another agenda was posted at the bulletin board in the county courthouse. The OMC held that no violation occurred. Note: One of the statutes at issue in this case has been changed, effective July 1, 2012.

Butte County Commission(08-04). Milo Dailey, with the *Belle Fourche Post & Bee*, filed this Complaint with the Butte County State's Attorney. The Complaint, filed in September 2008, claimed that the Butte County Commission violated the open meetings law by failing to disclose on its agenda that it would be both interviewing and hiring a new county auditor. The agenda listed only that they would be interviewing auditor applicants. The OMC held that no violation occurred.

City of Martin (09-01A & 09-01B). Robert Fogg, Jr., a member of the Martin City Council, filed this Complaint with the Bennett County State's Attorney. The Complaint, filed in March 2009, claimed that the city violated the open meetings law on two occasions. The OMC issued two decisions. In one matter the OMC determined that the City violated the open meeting law by failing to post an agenda 24 hours in advance of a special meeting and there was no emergency involved. The OMC issued a reprimand. The other matter involved the question of whether a City Council motion to go into executive session was detailed enough. The OMC held that the motion did not violate the Open Meeting law.

Groton Area School District(10-01). Betty Breck filed this Complaint with the Brown County State's Attorney. The Complaint alleged that the Groton Area School District had properly posted an agenda and called a special meeting to order, but then added another item to the agenda (and voted on the item) after the meeting was called to order. The additional item was not an emergency item. The OMC held that the additional item should have been handled by the Groton Area School District only upon 24 hours notice. A reprimand was issued.

Indian Hills Sanitary District (10-02). The Complaint was filed with the Meade County State's Attorney by Gary Garner, a member of the Indian Hills Sanitary District. It alleged that two of the three members of the Sanitary District met at various times to carry out responsibilities for road maintenance and not public notice was given. A reprimand was issued.

Sioux Falls Ethics Board (10-03). The Complaint was filed with the Minnehaha County State's Attorney by Kermit Staggers, a former City Council member. It alleged that the Sioux Falls Ethics Board met and took a vote during an

executive session. It is undisputed that the executive session was proper, but the vote was improperly taken during the executive session. A reprimand was issued.

City of Parkston, Parkston Board of Adjustment, Parkston Planning and Zoning Commission (11-01). James Weiss filed this Complaint with the Hutchinson County State's Attorney. It alleged that the City of Parkston, its Board of Adjustment, and its Zoning Commission failed to provide proper notice of meetings and improperly entered into an executive session on another occasion. The OMC held that although the Planning and Zoning Commission had notified the parties to a 2010 zoning meeting, it failed to issue a public notice for the meeting. The OMC also held that the Board of Adjustment improperly entered into executive session when it discussed the rationale for denying a permit in executive session, a matter that did not involve communications with legal counsel. A reprimand was issued.

South Dakota Historical Society (11-02). Ben Thompson filed this Complaint with the Hughes County State's Attorney. The Complaint was lodged in March 2011 for conduct in a meeting that occurred in 1998. The OMC dismissed the Complaint. Since it involved conduct that occurred before the OMC was created, the OMC held that it lacked jurisdiction.

Lincoln Township (11-03).The Complaint was filed with the Brown County State's Attorney by Kelly Kenser, a citizen of Lincoln Township, in April 2011. The Complaint claimed that Lincoln Township failed to provide public notice or post an agenda for four meetings held in January and February 2011. A reprimand was issued in August 2011 finding that the Township failed to provide public notice for three of the meetings at issue.

Silver Creek Township(11-04). The Complaint was filed with the Sanborn County State's Attorney by Donald Peterson. It alleged that two members of the township board (a quorum) met regarding replacement of a culvert and did not provide public notice. A reprimand was issued.

Willow Lake School District (11-05). The Complaint was filed with the Clark County State's Attorney by Marshall Edelman. It alleged that the District violated the Open Meeting law by holding two meetings without providing notice to the public and held an executive session behind locked doors. The OMC issued a reprimand for failure to provide public notice for two meetings. It further held that the third meeting was not conducted behind closed doors and the OMC found there was no violation.

City of Aberdeen (11-06 & 11-07). These Complaints were filed by Betty Breck with the Brown County State's Attorney. They claim the City of Aberdeen violated the open meeting law three times when it posted agendas on an inside hallway bulletin board and the public was able to view the agenda only during

business hours. Breck claimed the agenda was not visible to the public during part of the 24 hours before the meetings. The OMC initially held this was not a violation, but Ms. Breck agreed to dismiss these three claims after the passage of HB 1131 (requiring agendas to be visible for 24 hours prior to meetings). These complaints also involved an allegation that an agenda was not posted at all for a fourth meeting, a special meeting. A reprimand was issued for this special meeting.

City of Sioux Falls (12-01). This Complaint was filed by Sioux Falls Argus Leader with the Minnehaha State's Attorney. The Complaint claimed that the Sioux Falls City Council violated SDCL §1-25-2 in making a motion concerning a personnel matter that had been discussed in executive session. The motion was made in public, but did not fully disclose the subject matter of the action being taken. A reprimand was issued.

South Dakota Board of Medical and Osteopathic Examiners (12-02). This Complaint was filed by Chad Haber with the Minnehaha County State's Attorney. The Complaint alleged that the SDBMOE violated the Open Meeting Law in several ways, including conducting an executive session without authority. The OMC held that a specific state law applying to physician licensing requires or permits BMOE meetings to be closed for physician licensing matters. The OMC held that a reprimand was not warranted. Written Findings of Fact and Conclusions of Law were issued finding that no violation occurred.

Union County Weed Board (12-03). This Complaint was filed with the Union County State's Attorney by Ross Jordan. It alleged that the Weed Board met without proper notice under the Open Meeting Laws. The OMC found that a meeting was held and no notice or agenda had been posted. A reprimand was issued.

South Dakota Board of Massage Therapy (12-04). This Complaint was filed with the Hughes County States Attorney by Rhanda Heller. The Complaint claimed that the Massage Therapy Board violated the Open Meeting Law in several ways including failing to post a revised agenda on its website, conducting an improper executive session, and failing to provide public copies of its meeting materials. The OMC found that no reprimand was warranted on the open meeting claims and that the OMC lacked jurisdiction to consider the issue pertaining to copies of public records.