SOUTH DAKOTA OPEN MEETING COMMISSION

MINUTES OF MEETING

May 23, 2012

Teleconference Meeting

Members appearing by telephone: Lisa Rothschadl, Bon Homme County State's Attorney (Chair); Mark Reedstrom, Grant County State's Attorney; Emily Sovell, Sully County State's Attorney appeared by telephone. Glenn Brenner, Pennington County State's Attorney was absent. Diane Best assisted the Commission.

A call-in system was used where members of the public and interested parties could obtain the call-in number from the Office of Attorney General. Bill Engberg (Associated School Boards of South Dakota), Jon Arneson (counsel for the Argus Leader), and Dave Bordewyk (SD Newspaper Association)called in.

The public place for appearing at this meeting was the Office of Attorney General at 317 N. Main. Counsel for the City of Sioux Falls (Dave Pfeifle and Gail Eisland) were present. Several members of the press and public were present.

Chairman Rothschadl called the meeting to order.

Open Meeting Brochure.

Best addressed the new Open Meeting Brochure currently being prepared for publication. Best explained that this was an informational item. The changes are to reflect 2012 legislative changes and include changes to posting agendas and for placing them on websites.

Steele suggested that the brochure be changed to add "townships" on the first page. He also stated that the language "legal matters" on the second page is broad and should be changed to refer to "consultation with legal counsel" or similar language that more closely reflects the exemption at issue. Reedstrom and Rothschadl agreed.

No motion was required; this was an informational item.

Steele also noted that a new item for legislation next years should be providing for a central statewide website for posting agendas. Best noted that the Attorney General's office already has a website where agendas can be posted, but that is voluntary.

SECOND REVISED DRAFT

Approval of March 8, 2012 Minutes

Steele stated that page 3 should be corrected to substitute "voted" in lieu of "moved." He also said the language at the top of page 9 was vague. This was in respect to Mr. Pfeifle's response to a question as to whether Ms. Owen resigned or whether her employment was terminated by the city. Rothschadl suggested deleting "she had resigned and that was done privately and that was to protect her confidentiality. If it were public it would be meaningless" and to state instead that "the employment was terminated" without stating whether she resigned or not. The other members present agreed.

Sovell moved to approve the minutes of the March 8, 2011 meeting with the changes as discussed. Second by Reedstrom. All members present voted in favor by a roll call vote.

In the Matter of Open Meeting Complaint 12-01, Sioux Falls City Council.

Jon Arneson appeared on behalf of the complainant, Sioux Falls Argus Leader. David Pfeifle and Gail Eisland represented the City.

Rothschadl opened deliberations. Steele listed changes to the proposed Findings filed by the Argus Leader. He proposed changes to Finding #2(typographical error), Finding # 5 (change word "adjourn" to "going out of" or similar language), and making corrections to reflect Ms. Owens full title in other Findings.

Steele also suggested changing the footnote in page 4 (strike "lasting" in the 4th line and the rest of the footnote and adding a new sentence: The validity of the Council's actions is not before the OMC and to determine validity is not proper.") Both Rothschadl and Reedstrom agreed.

Steele suggested changing the decision language by striking the language starting with "on secret" and substituting "that conceals the subject matter on which action is being taken is a violation of the Open Meetings Law."

Steel also addressed the City's proposed Findings, suggesting that the OMC adopt Finding #1 and reject Findings #3 (a matter not before the OMC) and and #8.

Reedstrom agreed with Steele and suggested that the OMC also reject the City's proposed Findings #12, #13, and #14 as superfluous. He stated that the City's proposed Finding #1 should be used instead of Argus Leader #1 since it is more accurate.

Sovell stated she had no additional comments.

SECOND REVISED DRAFT

Rothschadl then lead the OMC through each of the Argus Leader findings, asking for comments and obtaining responses as follow:

Finding # 1-Use the City's proposal?
Oral consensus
Finding # 2-No changes.
Finding #3-Any comments?
Reedstrom suggested adding the second sentence from the City. proposals.
Finding #4-No comments
Finding #5- Comments on Steele's proposed change of deleting "adjourn" and substitute "coming out of"?
Steele said that it was to reflect generally used terminology.
Arneson stated that the use of "adjourn" was technically correct. The members generally agreed that they preferred "going out of."
Finding #6- No comments
Finding #7-No comments
Finding #8-Referenced Steele's proposal of correcting the references to Ms. Owen's title.
General agreement.
Finding #9-No comments
Finding #10-No comments
Finding #11-No comments
Finding #12-Adopt?
Pfeifle asked the OMC to take out the word "putative" if they adopt the Argus proposal.
Arneson stated that it wasn't intended to be derogatory.
Steele suggested that the word "putative" be taken out and the quotes be eliminated from this Finding and also the word "official."
Other members agreed.

Rothschadl then addressed the City's proposed Findings, asking for comments and obtaining responses as follow:

Finding #13-Deny? General consensus
Finding #14- Deny? General consensus

Rothschadl then lead the OMC through each of the Argus Leader's proposed Conclusions, asking for comments and obtaining responses as follow:

Conclusion #5-Any objection?
Reedstrom –quotes should be deleted around "official action."
Arneson-this was drafted without knowing whether the OMC would be ruling on the issue of whether the action taken was official action.
Steele-it is not a decision the OMC should make
Conclusion #6-Rothscadl stated she was okay with #6.

SECOND REVISED DRAFT

Steele-Is it an accurate statement.
Sovell-agreed with the language
Conclusion #7- Comments?
Sovell & Steele said it should be included.

Rothschadl then lead the OMC through each of the City's proposed Conclusions, asking for comments and obtaining responses as follow:

Conclusion#8,9,10,11-Any reason to include these? Not sure if necessary.
Other members agreed they could be included.
Conclusions #12,13,14,15-Any comments? Disagree with # 15.
Steele stated that it should be changed to "no jurisdiction to determine whether action of the council was valid or invalid."
Steele said City's 12 and 13 should be deleted. All agreed.
Steele suggested omitting "in light of this ruling" in #14.

Decision sections of proposals:
Steele stated he was concerned about the Footnote and it is taken care of if #15 is rephrased to show the OMC does not have jurisdiction to decide whether an action is valid or invalid.
Reedstrom asked for a consensus that the discussion section be deleted. The members agreed.

Reprimand section—Rothschadl stated that it was already addressed by Steele and is straightforward.

Arneson questioned the City's #3 in light of the City's other proposed Findings. And why adopt City's Conclusion 10? There is no generic exception for personnel matters. It should not be included.

Rothschadl asked for comments on #3. Steele asked if the agenda was in the materials submitted? Arneson said it was submitted but it is not an issue. Pfeifle stated that #3 should be adopted. The OMC has an education function. Steele stated that it should be left in. Rothschadl stated that it doesn't weigh heavily but the last sentence of City's #3 should be left in. All members present agreed.

Rothschadl asked the OMC to consider changing #10 to insert the word "certain" before the term "personnel." Arneson stated that the OMC authority is limited and there should not be a reference to SDCL 1-27-1.5 in the Findings as the City requested. OMC should have authority in this area and it has been discussed elsewhere. But it should be left out since there is no jurisdiction now. Sovell suggested leaving out the part in Finding #10 pertaining to SDCL 1-27-1.5.

Rothschadl asked Pfeifle if he had any comments.

SECOND REVISED DRAFT

Pfeifle stated that the City had confirmed before the meeting in question that the previous AG opinion was still valid and the OMC had relied on the AG opinion previously.

Rothschadl asked for a motion to approve the proposed Findings of Fact with the revisions discussed. Sovell moved and Steele seconded.

Upon roll call of the members present the motion carried.

Due to the number of changes, Best is to provide a redlined copy to the OMC and all parties.

Arneson asked the OMC to consider new legislation to address adding part of SDCL 1-27 to their jurisdiction. None of the members commented.

Adjournment

Sovell moved to adjourn. Steele seconded. All voted in favor.

Approved on_____, 2012

_____
Lisa Rothschadl, Chair
Open Meeting Commission

SECOND REVISED DRAFT