

March 7, 2007

STATE OF SOUTH DAKOTA

OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN MEETING)	FINDINGS OF FACT,
COMPLAINT 05-06)	CONCLUSIONS OF LAW
RAPID CITY REGIONAL)	AND REPRIMAND
AIRPORT BOARD)	

Vaughn Beck, Commission Member

INTRODUCTION

South Dakota has enacted a statute requiring meetings of local governing bodies to take place in public forum, SDCL Ch. 1-25. Those meetings may only take place after compliance with notice requirements found in SDCL 1-25-1.1. Executive or closed meetings may be held for the sole purposes of discussing (1) the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee. The term “employee” does not include any independent contractor; (2) discussing the expulsion, suspension, discipline, assignment of or the educational program of a student; (3) consulting with legal counsel or reviewing communications from legal counsel about proposed or pending litigation or contractual matters; (4) preparing for contract negotiations or negotiating with the employees or employee representatives; (5) discussing marketing or pricing strategy by a board or commission of a business owned by the state or any of its political subdivisions, when public discussion may be harmful to the competitive position of the business. This specific directive is found at SDCL 1-25-2. Violation of this statute is a Class 2 misdemeanor.

DISCUSSION AND DECISION

This matter comes before the Commission under the complaint of Linda Rydstrom, President of Westjet Air Center, Inc., on the use of executive session by the Rapid City Regional

Airport Board. The November 21, 2005, complaint alleges various violations of the open meeting laws in that the Rapid City Regional Airport Board continuously abused the right of entering into executive session for “personnel and contractual matters.” The Rapid City Regional Airport Board met for regular or special meetings on a monthly basis and at times twice per month between the dates of February 9, 2004, and October 31, 2005. During these meetings, the Board often entered into executive session for the noted purpose of discussing personnel or contractual matters. Although the complaining party alleges that the Board upon entering into executive session at all of these meetings was an abuse of the use of executive session, the complaint refers mainly to the special meeting and executive session entered into on September 1, 2005, and the special meeting and use of executive session by the Board on September 21, 2005. On November 21, 2005, Linda Rydstrom, on behalf of Westjet Air Center, Inc., filed a complaint with the Pennington County State's Attorney's Office alleging violations of SDCL 1-25-1 and 1-25-2.

SDCL 1-25-2 sets out the permitted topics of discussion for a board to use while in executive session. The minutes of the Rapid City Regional Airport Board state that the purpose of the executive sessions was to discuss “contractual matters.” The minutes of the Rapid City Regional Airport Board clearly reflect that a motion to enter into executive session for the purpose of contractual matters was made. Complainant alleges that the Board violated the portion of the open meetings law found at SDCL 1-25-2 in that entering into executive session for the purpose of discussing contractual matters is not permitted as one of the five reasons enumerated in the statute. Subparagraph 4 of the statute allows for “preparing for contract negotiations or negotiating with employees or employee representatives.” The Rapid City Regional Airport Board has stated that the contractual matters discussed in the executive sessions

were to prevent future litigation and the respondent has further acknowledged that while the Board was in executive session for these contractual matters, the Board's attorney was not always present, but rather, Chris Lien, an interested party in the discussions, was present with the Board. After reviewing the record herein, the Commission concludes that the numerous executive sessions for "contractual matters" were an abuse of the permitted uses listed in SDCL 1-25-2. This Commission has held that consideration of entering into contracts is not in and of itself a proper subject for a closed session under SDCL 1-25-2. In the Matter of the Complaint of South Dakotans for Open Government Against the South Dakota Science and Technology Authority (Opinion issued February 20, 2007).

The facts presented to the Commission indicate that the Board was not consulting with legal counsel or reviewing communications from legal counsel as allowed in SDCL 1-25-2(3) or addressing employee negotiations under SDCL 1-25-2(4). In addition, the Board's private meeting with Chris Lien is not permissible under "contractual matters," but should have been conducted in an open meeting format.

The Commission therefore makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Rapid City Regional Airport Board is a related board of a political subdivision of the State of South Dakota as those terms are used in SDCL 1-25-1.
2. On September 21, 2005, and at other times, the Airport Board held closed meetings or executive sessions for the purpose of discussing contractual matters, which did not involve reviewing communications from its attorney and in which its attorney was not present to consult with.

CONCLUSIONS OF LAW

1. The Rapid City Regional Airport Board is an entity subject to the provisions of the open meetings law, SDCL ch. 1-25.
2. The closed session held by the Board on September 21, 2005, was in violation of the open meetings law for the reason that it was not held for a purpose for which closed sessions are authorized under SDCL 1-25-2.
3. The Board should be publicly reprimanded.

REPRIMAND

The Rapid City Regional Airport Board is hereby publicly reprimanded for violation of the South Dakota open meetings law on September 21, 2005.

Commission Chair Steele and Commission member Rothschadl, concur. Commissioners Brenner and Reedstrom did not participate.