

(DRAFT)

SOUTH DAKOTA OPEN MEETINGS COMMISSION

MINUTES OF MEETING

October 14, 2016

Aberdeen, South Dakota

Members participating: Emily Sovell, Sully County State's Attorney (Chair); John Steele, Aurora County State's Attorney; Kevin Krull, Meade County State's Attorney; Mark Reedstrom, Grant County State's Attorney; and Lisa Rothschadl, Bon Homme County State's Attorney. Steve Blair and Jenna McFarlane, Office of the Attorney General, assisted the Commission.

Chair Emily Sovell called the meeting to order at 1:00 p.m. Mr. Reedstrom moved to approve the proposed agenda; Mr. Krull seconded. All members voted by roll call in favor of the motion to approve the agenda.

The following is a summary (not verbatim) of the matters discussed.

May 4, 2016 minutes.

Ms. Rothschadl moved to approve the draft minutes of the May 4, 2016 meeting. Mr. Steele seconded. All members voted by roll call in favor of the motion to approve the minutes.

In the Matter of Open Meeting Complaint 16-01, Groton City Council.

Ms. Betty Breck appeared as the Complainant. Attorney Drew Johnson appeared on behalf of the Groton City Council. Anita Lowary, Finance Officer, and Mayor Scott Hanlon, of the Groton City Council, also appeared.

Ms. Breck asked for clarification on exactly what part of her complaint was before the Commission; if all the issues raised in the materials submitted to the Brown County State's Attorney were being considered, or if just the one issue the State's Attorney forwarded to the Commission was being considered. Chair Sovell informed Ms. Breck the Commission was considering the one issue referred by the State's Attorney. Mr. Steele agreed and stated the State's Attorney dealt with the other issues in accordance with the open meetings statutes.

Ms. Breck stated the complaint against Groton City Council alleged four violations all of which took place at a meeting on June 20, 2016. The third violation, and alleged failure to vote on the motion to go into executive session, is the one that prompted the Brown County State's Attorney to forward the complaint to the Commission. According to Ms. Breck the evidence clearly showed that the City Council did not vote to go into executive session at the June 20 meeting. Ms. Breck referenced Exhibit 2 of the complaint, a verbatim transcript of the videotape of that portion of the meeting. Ms. Breck stated the Mayor merely declared that "[w]e are in executive session, Betty, and you are going to have to go," but no vote to enter executive session was ever taken.

Ms. Breck further stated that the initial minutes of the June 20 meeting recorded that a vote was taken, but at the July 5, 2016, City Council meeting the June 20 minutes were corrected to say that the City Council adjourned into executive session on a motion made by a council member and seconded by another. Ms. Breck informed the Commission that the correction didn't make any reference to the purpose of the meeting and did not mention any vote was taken. Ms. Breck concluded that the evidence clearly showed the City Council violated SDCL 1-25-2 by not voting to go into executive session.

Mr. Johnson stated that the agenda for the June 20 meeting included notice of an executive session. Mr. Johnson informed the Commission when it came to that point on the agenda, Ms. Breck stood up and insisted to be heard on a memorandum she had drafted and gave to the City Council that evening. Mr. Johnson further stated that he was reviewing the memorandum when Mayor Hanlon engaged in a heated discussion with Ms. Breck. According to the transcript of the meeting, a City Council member made a motion to go into executive session while the dialog between Ms. Breck and Mayor Hanlon continued. The Council member made the motion a second time which was then seconded by another member of the Council. Mr. Johnson stated that as soon as Mayor Hanlon heard there was a second to the motion, the Mayor declared the Council to be in executive session and asked Ms. Breck to leave. Mr. Johnson indicated that he felt this action was clearly a mistake made in the confusion created by the discussion between Ms. Breck and Mayor Hanlon. Mr. Johnson indicated it was normal practice for the City Council to hold a vote to go into executive session.

Finally, Mr. Johnson stated that at the July 5 City Council meeting the Council moved to revise the minutes from the June 20 meeting after review of the videotape of the June 20 meeting showed no vote taken to enter executive session. Mr. Johnson informed the Commission that Mayor Hanlon changed

the minutes to recognize that a mistake had been made on the City Council's part. Mr. Johnson apologized to Ms. Breck and the State's Attorney, for the error on the City Council's part that was simply not caught in time.

Mr. Johnson stated that the City Council knows it's required to take a vote to go into executive session and will continue to do so in the future.

In rebuttal, Ms. Breck stated that she believed the law was clear and asked the Commission to find that Groton City Council had violated the open meeting law by going into executive session without a vote.

Mr. Steele indicated that Mr. Johnson had stated that the City Council's normal procedure was to conduct a vote to go into executive session.

Mr. Steele asked Ms. Breck if she had any reason to disagree with that.

Ms. Breck indicated that she had not been to enough meetings, but had reviewed available videotapes of the meetings and thought there possibly had been another instance where they went into executive session without voting.

Chair Sovell made a general observation that in working with councils, commissions or boards it may be difficult at times to keep track of the motions, seconds and/or votes. Chair Sovell indicated, however, that she felt the law requires that a public body must have a vote to go into executive session and that entering executive session without a vote was a strict violation of that requirement. Mr. Steel agreed.

Mr. Krull also agreed with Chair Sovell stating it was a technical violation.

Mr. Reedstrom agreed and indicated that the only remedy available to the Commission was a public reprimand. Mr. Reedstrom did indicate that he appreciated Mr. Johnson apologizing to Ms. Breck for the error. Ms. Rothschadl also agreed there had been a violation.

Mr. Steel moved to reprimand the Groton City Council for going into executive session without voting on a proper motion to enter into executive session.

Ms. Rothschadl seconded. Roll call was made with Ms. Rothschadl, Mr. Reedstrom, Mr. Krull, Ms. Sovell and Mr. Steele voting aye.

In the Matter of Open Meeting Complaint 15-03, Deadwood City Commission

The Commission considered proposed Findings of Fact and Conclusions of Law drafted in regards to this matter. Mr. Reedstrom made a motion to approve the Findings of Fact and Conclusions of Law as drafted which was seconded by Mr. Krull. A roll call was conducted and all members voted aye.

Election of Chair

Ms. Sovell nominated Mr. Krull. Mr. Reedstrom seconded. A roll call was conducted and all members voted aye. Mr. Krull will serve as Chair starting January 1, 2017, for next year.

Adjournment.

A motion to adjourn was made by Mr. Steele, seconded by Mr. Reedstrom, at approximately 1:43 p.m. All members voted aye by roll call and the Commission adjourned.

Approved on _____, 2017.

Kevin Krull, Chair
On behalf of the Open Meeting Commission