

9/21/06

STATE OF SOUTH DAKOTA

OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN MEETING)	FINDINGS OF FACT,
COMPLAINT 05-04,)	CONCLUSIONS OF LAW
FAULKTON SCHOOL BOARD)	AND DETERMINATION OF
)	NO VIOLATION

Commission member Lisa Z. Rothschadl, Opinion Author

INTRODUCTION

South Dakota has enacted a statute requiring meetings of local governing bodies, including school boards, to take place in a 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 employees 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.

FINDINGS OF FACT

At the April 11, 2005, school board meeting of the Faulkton Area School 24 3, the Board entered into executive session by proper motion for the purpose of "discussion of negotiations, personnel, and a student matter." Following executive session a motion was made by a board member with a proper second to offer contracts to thirty staff members for the 2005-2006 school year. There was no mention in said motion to not offer contracts to certain teachers including for teachers who were at the time not considered continuing contract teachers for the school district.

On July 8, 2005, the Complainant, C. Jody Moritz filed a complaint with the Faulk County State's Attorney alleging that the school board violated the executive or closed meeting laws as previously set forth herein by entering into an executive session for reasons not outlined under the permitted uses of executive session and furthermore that official action was not taken in an open meeting as required.

DISCUSSION AND CONCLUSION

SDCL 1-25-2 clearly sets out permitted topics of discussion in executive session. The stated purpose of the executive session in the official minutes of the Faulkton School Board indicates the reasons they entered into executive session fall within the areas permitted by law. Namely discussion of

negotiations, personnel matters and a student matter.

Therefore, this Commission concurs and hereby issues its decision finding that the Faulkton Area School District 24-3 properly entered into executive session at the meeting of April 11, 2005.

Complainant herein further alleges that the Board violated the second portion of the Open Meeting law found at SDCL 1-25-2 by taking official action concerning personnel or contract negotiations during the closed meeting session. This Commission has reviewed the record herein and has determined that the non-renewal of the Board of the four teachers was not an "official" action as contemplated by the statute. There does not appear to be a law requiring an affirmative action on the part of the school board when making its decision to non-renew certain teachers. Therefore, the Board was only required by law to take affirmative action in renewing the thirty contracts as the official action following the executive session. Although these four teachers were employed by the school district previously they were not continuing contract teachers and therefore had no additional rights over any other new teacher applicant.¹ The Commission concludes the Faulkton Area School Board was in compliance with SDCL 1-25-2 by making the hiring motion in the

¹ The Commission notes that the Complainant fairly raises an important issue to be considered. Moreover, the Commission commends the pro se Complainant for the insight brought to bear on the analysis of whether something should be considered in executive session.

open meeting. There is no legal requirement that the Board must make a separate motion to not hire certain individuals in this situation.²

Based on the foregoing Findings of Fact and Conclusions of Law, the Commission hereby determines that there was not a violation of SDCL 1-25-2 by the Faulkton Area School District 24-3.

Commission members Vincent Foley (Chairman), Vaughn Beck, Glenn Brenner, and John Steele concur.

² The circuit court has considered the same underlying legal issue and reached the same result in a separate action brought by the teachers against the Faulkton Area School Board. That is currently pending appeal to the state Supreme Court. This Commission notes that the outcome of this case involves only the issue of whether the open meetings laws were violated based on statutes and case law in existence at the time the meeting was held.