

July 11, 2005

STATE OF SOUTH DAKOTA

OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN MEETING	)	FINDINGS OF FACT,
COMPLAINT 05-03,	)	CONCLUSIONS OF LAW
GREGORY SCHOOL BOARD	)	AND REPRIMAND

Vincent A. Foley, Commission Chair

**INTRODUCTION**

South Dakota has enacted a statute requiring meetings of local governing bodies to take place in a public forum, SDCL Ch. 1-25. Those meeting may only take place after compliance with notice requirements, SDCL 1-25-1.1. A violation of these rules is a Class 2 misdemeanor.

In 2003 South Dakota Attorney General Larry Long created the Government Openness Task Force to discuss and study Open Government issues. As a result of the study of one portion of the task force, representatives of local governments, members of law enforcement, and representative members of the press drafted a package of legislation and presented it to the South Dakota Legislature to address violations of the "open meeting" law.

Under the modifications as enacted, a complaint of a violation of the open meeting law must be made to the local State's Attorney, SDCL 1-25-6. After an appropriate investigation, the State's Attorney has three options. First, that officer may commence a prosecution for violation of the open meeting statute, SDCL 1-25-6(1). Second, as with any investigation, the prosecutor may determine that insufficient information for a prosecution exists, SDCL 1-25-6(2). In that

instance, the decision and supporting investigation must be forwarded to the Attorney General. Finally, the State's Attorney may forward the complaint to the South Dakota Open Meeting Commission, SDCL 1-25-6(3)

Created in the legislative package, the Open Meetings Commission consists of five State's Attorneys appointed by the Attorney General, SDCL 1-25-8. The Commission receives the complaints and subsequent investigations and considers that information and supplementary information. Should the Commission determine that there has been a violation, it may issue a reprimand to the local body on the violation, SDCL 1-25-7.

#### **FINDINGS OF FACT**

On April 25, 2005, the Open Meetings Commission heard oral presentations on the matter of the Complaint of Mona Taggart submitted to the Gregory County State's Attorney for a violation of the open meetings law.

January 10, 2005, the Gregory School District Board met for their regular meeting. During the meeting the Board went into executive session to discuss the superintendent's evaluation, and negotiations with District staff. In that executive session, a citizen's letter was presented which discussed a plan to consolidate the Gregory School District and the Burke School District; a discussion item which had recently commanded high local interest. Locally, and at this Commission's April 25th meeting in Plankinton, South Dakota, the Gregory School District has admitted they violated the open meetings statute by discussing the plan proposed in the letter in executive session.

## **DISCUSSION**

SDCL 1-25-2 clearly sets out permitted topics of discussion in executive session. The stated purposes of the executive session for the Gregory School District Board in its motion to enter executive session fall within one of those areas as the discussion of the superintendent's evaluation was clearly a personnel action SDCL 1-25-2(1), and the negotiations with staff could fall under that topic or the permitted topic of bargaining unit negotiations SDCL 1-25-2(4). However, the foray into the unannounced topic of consolidation was first and foremost a violation from the start. It did not matter that no official action was taken. Both the act of initiating the topic and the act of then sustaining the discussion violated the Open Meeting laws when neither were mentioned in the motion to enter into executive session. Even had the plan been mentioned in the entering motion, it is clear that it was not an appropriate topic of executive session discussions as outlined in SDCL 1-25-2.

## **CONCLUSION**

By admission and apology, the Gregory School District admitted violating the Open Meeting laws of the State of South Dakota when they discussed an inappropriate matter in executive session, and did it without properly stating in the entering motion that it would be a topic of conversation. This Commission concurs and issues its decision finding that such violations occurred, and REPRIMAND the Gregory School District for the same. There is apparently a local issue regarding the scope of a public apology. This Commission is not empowered to determine the

scope, appropriateness or content of apologies for actions taken by public boards.

Commission members **STEELE, ROTHSCHADL, BRENNER, and BECK** concur.

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