

November 12, 2008

STATE OF SOUTH DAKOTA

OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN MEETING)
COMPLAINT 07-02)
CITY OF WATERTOWN, CODINGTON)
COUNTY, SOUTH DAKOTA)

FINDINGS OF FACT,
CONCLUSIONS OF LAW

Vaughn P. Beck, Commission Member

INTRODUCTION

The State of South Dakota has enacted a statute requiring meetings of local governing bodies to take place in a public forum, SDCL 1-25. Those meetings may only take place after compliance with notice requirements found in SDCL 1-25-1.1. In addition, all meetings of local governing bodies must be open to the public unless they fall within the criteria established in SDCL 1-25-2. A violation of these rules is a Class 2 Misdemeanor.

DISCUSSION AND DECISION

This matter came before the Commission following the filing of a complaint dated August 20, 2007, by the *Watertown Public Opinion*. The complaint alleged that the City of Watertown violated the open meeting laws by conducting a City Finance Committee Meeting on August 10, 2007, without giving notice of the committee meeting to the public by way of posting an agenda and also alleging that a quorum was present to conduct business at the committee meeting.

The record indicates that the City of Watertown's Finance Committee meets on a regular monthly basis and consists of five (5) council members and the Mayor. The record further

indicates that the total number of council members for the City of Watertown is ten (10).

Minutes of the committee meetings are not published in the local newspaper; however, they are posted on the City's website.

The complaining party in this matter contends that the finance committee, which is a long established committee created by City of Watertown Ordinance, is a public body and required to post an agenda of all meetings in a timely manner as provided by law, and further alleges that a quorum of council members is present to conduct business due to the fact that five (5) council members are present along with the Mayor, who also votes on issues brought up for discussion.

The City of Watertown in its defense has stated that the committee is merely used to address issues and act as a fact finding group which would then report to the full City Council, wherein action can then be taken. Further, the City of Watertown states that a quorum consists of six (6) council members out of the ten (10) council member body and the Mayor's only voting ability would be to break a tie.

Although some discussion was held as to a sixth council member being present at the meeting, thereby creating a full quorum of council members being present and able to take action on matters, discussion revealed that the sixth council member was merely present at the City Office for the purpose of paying a utility bill and then was talking to another fellow council member prior to the committee meeting and once the committee began the sixth council member promptly left the building, thereby leaving five (5) council members and the Mayor to conduct the committee meeting.

FINDINGS OF FACT

1. The City of Watertown is a related board or entity of a political subdivision of the State of South Dakota as those terms are defined in SDCL 1-25-1.
2. The common council for the City of Watertown consists of ten (10) council members and a Mayor.
3. A finance committee created by City Ordinance consists of five (5) council members and the Mayor.
4. On August 10, 2007, the Finance Committee for the City of Watertown met for a monthly meeting and in doing so failed to post an agenda of the committee meeting.

CONCLUSIONS OF LAW

1. The City of Watertown is an entity subject to the provisions of the Open Meeting Law, SDCL 1-25.
2. A quorum of the common council for the City of Watertown consists of six (6) council members.
3. A committee formed by the Council consisting of five (5) council members and a Mayor does not constitute a quorum and is not a public body meeting for the purpose of conducting public's business in that a quorum of the City Council is not present to take action on any particular subject.
4. A committee or a task force formed by political bodies, which does not have a quorum of the public body's representatives present can not take action on issues, and therefore are merely fact finding or information gathers who will ultimately report to the public body at an open meeting at which said open meeting an agenda must be posted, the meeting must be open to the public, and minutes of the meeting must be published. The committee in this case did not have a

quorum present to conduct formal business nor was it capable of taking formal action and therefore was not required to post an agenda of the committee meeting or to formally publish minutes of the committee meetings.

Therefore, the commission finds that there was no violation of the open meeting law with the City of Watertown's Finance Committee.

Commissioners Brenner, Reedstrom, Rothschadl, and Steele concur.