

March 9, 2012

STATE OF SOUTH DAKOTA
OPEN MEETING COMMISSION

IN THE MATTER OF OPEN MEETING	)	FINDINGS OF FACT,
COMPLAINT 11-05, WILLOW LAKE	)	CONCLUSIONS OF LAW,
SCHOOL DISTRICT	)	AND REPRIMAND
	)	

INTRODUCTION

Pursuant to SDCL 1-25-1 and SDCL 1-25-1.1 any meeting of a public body to discuss official business must be preceded by proper notice to the public. Notice and an agenda must be provided to the public at least twenty-four (24) hours prior to regular meetings. Furthermore, the required notice must be posted in a location visible to the public at the principal office of the public body holding the meeting. The same rule applies to special meetings to the extent that the circumstances permit.

DISCUSSION AND DECISION

This matter came before the OMC as a result of a Complaint filed with the Clark County State's Attorney by Marshall Edelman. The Complaint, dated March 30, 2011, alleged three violations of the open meeting requirements in SDCL 1-25-1 and SDCL 1-25-1.1. Specifically, the Complaint alleged that the Willow Lake School Board (WLSB) held two meetings without posting notice of the meetings or otherwise providing public notice. The Complaint further

alleges that the Board physically denied access to a third meeting. Following further investigation and analysis, this matter was forwarded by the State's Attorney to the OMC on September 27, 2011 and was heard by the OMC on December 7, 2011.

As to the first allegation, the record indicates that on December 20, 2010 all members of the WLSB met informally with the school staff and administration to discuss the school's financial affairs. A second similar meeting was held on January 11, 2011, this time with three of the five board members. There was no agenda or public notice for either meeting. A reprimand is warranted for these two meetings.

The third allegation involves a WLSB meeting on February 23, 2011. It is undisputed that an agenda was posted and that this was a special meeting. Based on the record, the main door to the school building was locked, but there was access to the building through another door. After reviewing this matter, the OMC finds that a reprimand is not warranted.

FINDINGS OF FACT

1. The WLSB is a five member board and a quorum consists of three members.
2. Marshall Edelman filed the Complaint with the State's Attorney on March 30, 2011. Since then he has become a member of the WLSB. However his Complaint and involvement in this matter was in his personal capacity. He appeared at hearing through his attorney, Scott Swier.

3. The Edelman allegations pertain to the WLSB as it was configured during the period from December 20, 2010 through February 23, 2011. The currently configured WLSB chose not to defend these allegations and admits them.

4. Sandra Hovde and Jessica Michalski appeared before the OMC. They were WLSB members at the time of the allegations in question. They appeared personally. The WLSB, including Edelman, voted to deny them the use of the WLSB attorney to defend this matter.

5. In December 2010 the entire WLSB met with the school staff and administration. It is undisputed that there was no agenda and the board had not provided the public with notice of the meeting. The parties disagree as to whether the meeting occurred on December 20 or 21. Hovde explained that at its regular WLSB meeting on December 20 the WLSB agreed to have an informal meeting or “listening session” with staff the next day to fill them in on the financial circumstances of the school. The meeting with the staff and administration was posted on wikispaces.com (not the principal place of business for the WLSB) and was held on December 21. The OMC accepts the Hovde explanation.

6. The WLSB adjourned on the evening of December 20, 2010. The staff meeting on December 21 was not a continuation of the December 20 meeting.

7. On January 11, 2011 the Willow Lake School Board held a second meeting with the school staff and administration, but this time three of the five board members participated. Those members were Sandra Hovde, Doug

Lamont, and Butch Brenden. There was no agenda and the WLSB had not posted or provided the public with notice of the meeting. This was also a situation where the WLSB addressed funding at its regular meeting and then members met with staff at the school the next day as a follow up.

8. The WLSB adjourned on the evening of January 10, 2011. The staff meeting on January 11 was not a continuation of the January 10 meeting.

9. Both the December 20, 2010 and the January 11, 2011 meetings involved the financial affairs of the Willow Lake School District. The purpose was to give information to the staff and share their concerns about school finances. The Board made no decisions and took no votes at these meetings.

10. The third meeting at issue was on February 23, 2011. The WLSB called an emergency meeting. Notice was given to the media. An agenda was posted on the main door to the building.

11. Edelman came to the school for the February 23, 2011 meeting and the main door to school could not be opened from outside the building. Someone from inside the building let him in. He was told that the issue being discussed was a personnel issue and was already in executive session.

12. It is undisputed that the meeting in question was an evening meeting and the main door to the building was locked. There were, however, other doors in this building; an unlocked door was on the same side of the building.

13. For regular meetings the WLSB generally enters the main door. Based on the response filed by WLSB member Sandra Hovde, the school has 12 doors. At

least some of the doors to the school have glass panels so people could see which areas were dark and which were not. Hovde explained that she and other School Board members entered the meeting room on February 23, 2011 from an outside door near the Superintendent's office. The executive session was held in a meeting room in or near the Superintendent's office.

14. The minutes for the WLSB meeting on February 23, 2011 reflect that the WLSB convened at 8:00 p.m. and went into executive session at 8:24 p.m. The motion for executive session was made for personnel reasons.

15. Allegations were made that the WLSB removed the agenda from the main door to use it for scratch paper during the meeting, but actually the WLSB found that they needed a copy of the agenda to use to conduct their business and that is why it was taken down.

16. The executive session was for both personnel and student discipline issues. The issue was how to instruct a staff member on handling a student about participation in an extracurricular matter that was scheduled in the immediate future.

17. The locked door might have been an oversight stemming from the emergency nature of the meeting. The main door should have been open and that would have been the ideal situation, but the public was still able to use another door. A door was open to the building.

18. In addition to the foregoing, the Complaint filed with the Clark County State's Attorney sought a reprimand on the basis that there was not a proper

emergency basis for the meeting on February 23, 2011 and that the posting was not proper for that meeting. The State's Attorney reviewing the matter did not refer these issues to the OMC.

19. The WLSB actions on December 21, 2010, January 11, 2011, and February 23, 2011 were not malicious acts and involved unintentional conduct. In fact, sharing information with the administration and staff is commendable. However, the two meetings were not preceded by notice to the public with a posted agenda.

20. This matter has been divisive among the WLSB members. Also, the OMC complaint was the subject of an article in the local newspaper in March 2011 and the investigation was a matter of local public concern.

21. The OMC has no authority to address the potential conflicts of Mr. Edelman and therefore makes no findings in that regard.

CONCLUSIONS OF LAW

1. The WLSB is an entity subject to the provisions of the Open Meeting Law, SDCL ch. 25. Any three members constitute a quorum.

2. The WLSB is required to prepare and post the notice of its meetings, with a proposed agenda, at least 24 hours prior to any meeting pursuant to SDCL 1-25-1.1 (or in the case of special or rescheduled meetings to the extent circumstances permit).

3. Entities subject to the Open Meeting Law are required to comply with the requirements of SDCL 1-25-1 and SDCL 1-25-1.1 for any meeting or session no

matter how formal or informal if a quorum is present and official business is discussed.

4. On December 20, 2010 all members of the WLSB met with the school staff and administration to discuss the school's financial affairs without having posted an agenda or having provided public notice. This warrants a reprimand.

5. On January 11, 2011 three members of the WLSB met with school staff and administration to discuss the school's financial affairs without having posted an agenda or having provided public notice. This warrants a reprimand.

6. Ms. Michalski asked the OMC to find that local newspaper articles, the investigation of the Board members, the local public scrutiny, and the effects of the scrutiny on their families were sufficient punishment if the OMC found them to be in violation of the Open Meeting Laws. The OMC lacks authority to do that. When the OMC finds that a violation has occurred it must issue a reprimand.

7. On February 23, 2011 the WLSB posted an agenda for a meeting on an emergency basis with less than 24 hours' notice. The lack of notice was due to the timing of a scheduled event. Although a complaint was lodged about the sufficiency of the Notice and the question of whether this was a true emergency or reason for a special meeting, the State's Attorney declined to refer these questions to the OMC. The OMC offers no opinion on these matters.

8. The February 23, 2011 matter concerned an executive session. When a public body meets for purposes of discussing official business in an executive

session the public body is still required to convene publicly before entering into executive session. The public is entitled to have the opportunity to observe the public entity convene and enter into executive session even if the item to be discussed in the executive session is the only item to be handled at that meeting.

9. On February 23, 2011 the public had the ability to attend the WLSB meeting to see the WLSB convene and enter into executive session. While the main door to the school was locked from the outside, a person in the building let Mr. Edelman in the building. Further, there was at least one other door that was unlocked. While this may have made attendance more difficult, the OMC is unable to find that the WLSB violated the Open Meeting Law.

FINAL DECISION

Based on the foregoing, the OMC makes the following decisions:

1. The WLSB, as it was configured on December 21, 2010, is hereby publicly reprimanded for its violation of the Open Meeting Law on that date.
2. A quorum of the WLSB as it was configured on January 11, 2011 is hereby publicly reprimanded for its violation of the Open Meeting Law on that date.
3. As to the Complainant's third allegation, the OMC finds no violation.

Issued by Commissioners Rothschadl (Chair), Brenner, Reedstrom, Sovell, and Steele.