

November 20, 2007

STATE OF SOUTH DAKOTA

OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN MEETING)
COMPLAINT 06-04)
CITY OF TRIPP)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND REPRIMAND

Lisa Z. Rothschadl, Commission Member

INTRODUCTION

The complaint of Joseph Jackson against the City of Tripp for violations of the open meeting law and the posting of the agenda requires a review of two relevant statutes enacted by the South Dakota Legislature.

First, the state has enacted a statute requiring meetings of local governing bodies to take part in a public forum, SDCL Ch. 1-25. 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; (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 of contractual matters; (4) preparing for contract negotiations or negotiating with the employees or the 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. SDCL 1-25-2. A violation of this statute is a Class 2 Misdemeanor.

Second, the state has enacted a statute setting forth certain requirements involving the agenda and notice of the public meetings and special meetings. Pursuant to SDCL 1-25-1.1, these public meetings shall only be conducted after proper notice is made with the proposed agenda. This notice is to be provided to the public at least twenty-four (24) hours prior to the meeting. Furthermore, the required notice shall 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. A violation of these rules is a Class 2 misdemeanor.

DISCUSSION AND DECISION

On July 24, 2006 the Open Meetings Commission heard oral presentations on the matter of the Complaint of Joseph Jackson submitted to the Hutchinson County States Attorney for a violation of the open meetings law. This matter came before the Commission following the filing of a verified complaint dated April 13, 2006 and signed by Joseph Jackson. The complaint specifically alleged numerous violations of the open meeting laws found at SDCL Ch. 1-25 and the meeting agenda requirements found at SDCL 1-25-1.1

Violations 1, 2, 3, and 9 allege the City of Tripp failed to properly post the agenda for the January 3, 2006, the February 6, 2006, the March 6, and the April 3, 2006 meetings. James R. Haar, attorney for the City of Tripp, and Jennifer Friederich, city finance officer for the City of Tripp, both testified that for all city meetings the agenda is ready by no later than the Friday before the Monday city meeting. Although, the agenda was timely prepared, it is apparent from the record by the admission of the Finance Officer that the City did fail to post the agenda. The law not only requires timely

preparation of the agenda but the agenda, along with the notice of the meeting, must also be posted at the principal office of the public body holding the meeting, visible to the public. SDCL 1-25-1.1. The City of Tripp has therefore violated the law and should be reprimanded for its action.

Violation 4 of the complaint alleges that a resident of Tripp was allowed to speak and ask questions at the March 6, 2006 meeting when she was not included on the agenda. Obviously, the monthly city meeting is an open meeting and can be attended by anyone. To expect an interested citizen of a community to remain silent because she was not on the agenda is certainly not the intention of an open meeting. The city council heard the concerns and comments of the taxpayer but took no action. Therefore this is not a violation of the law.

The writer of this opinion notes for the record that the verified complaint does not contain a Violation number 5.

Violation 6 of the complaint alleges that no agenda was posted for the special meeting on March 13, 2006 to accept the police chief's resignation that occurred on March 8, 2006. According to SDCL 1-25-1.1, the notice of a special meeting shall also comply with the public notice provisions of posting the notice with a proposed agenda, to the extent that the circumstances permit. The issue before this Commission for purposes of this allegation is whether the circumstances permitted proper notice. The record does not provide sufficient information to rule on this matter. It is apparent from the calendar that there were 3 full business days from the time of the resignation to the special meeting which would seem to allow for the proper posting of the agenda and notice. However, due to a lack of information, no decision will be made on this alleged violation.

Violations 7 and 8 of the complaint stems from an executive session held at the March 13, 2006 special meeting. Following the special meeting, the finance officer was instructed to discuss with the City Attorney whether or not to withhold Complainant's final paycheck and charge the Complainant for a balance due on health insurance premium. The City Attorney was on vacation at the time of this meeting and did not return until March 22, 2006. According to the City Finance Officer, there were no minutes to reflect the council's decision to have this matter brought before legal counsel. Executive sessions by their nature are confidential and that makes it difficult for anyone to determine the actual topics discussed in executive session and whether any votes or actions were taken in the executive session. The only way for the public or this Commission to make any determinations on this issue is to review the Board's activity or actions following the executive session. In this case, the council told the finance officer to contact the city attorney upon his return and make a decision based on advice of legal counsel regarding the final paycheck. It is clear that the City of Tripp did take some form of action in executive session even if there was no official vote on the matter. The council had a duty to exit executive session and make a motion authorizing the finance office to discuss this matter with the attorney and do whatever the attorney recommends. This action violates the open meeting laws and requires a reprimand.

Violation 10 appears to be only an extension of Violation 8 and will not be addressed separately by this Commission.

FINDINGS OF FACT

1. The city of Tripp and its city council constitute a political subdivision of the State of South Dakota as referred to in SDCL 1-25-1.
2. That Complainant in this matter raises 9 violations of the laws found in SDCL Chapter 1-25.
3. For purposes of Violations 1, 2, 3 and 9, the City of Tripp failed to properly post the notice of meeting and the agenda as required based upon the admission of the City Finance Officer.
4. According to alleged Violation 4, the City of Tripp permitted a citizen to speak at an open meeting even though the citizen was not listed on the agenda and following the citizen's comments, no action was taken by the Council.
5. Violation 6 alleges that there was no agenda or notice posted for the public concerning the March 13, 2006 special meeting. There is insufficient information in the record to determine if the circumstances surrounding the scheduling of this special meeting permitted the required posting of the agenda and notice.
6. Violations 7 and 8 involve an executive session held on March 13, 2006 at the special meeting. At some time during this meeting, the finance officer was instructed to meet with their attorney and follow the advice of the attorney regarding the Complainant's final

paycheck. There were no minutes taken concerning this matter and according to the testimony of the finance officer, there was no motion made following the executive session advising her to meet with the attorney.

7. Alleged violation 10 is merely an extension of Violation 8 and the specifics of violation 10 do not fall within the review process of this Commission.

CONCLUSIONS OF LAW

1. The Tripp City Council is an entity subject to the provisions of the open meetings law found at SDCL Chapter 1-25.
2. The Tripp City Council and/or the City Finance Officer are required to prepare and post the notice of its regular monthly meetings, with a proposed agenda, at least 24 hours prior to any meeting pursuant to SDCL 1-25-1.1. The City timely prepared the agenda and notice but failed to properly post the same for the meetings on January 3, 2006, February 6, 2006, March 6, 2006 and April 3, 2006. This is a direct violation of SDCL 1-25-1.1 and is subject to a public reprimand.
3. The Tripp City Council permitted a member of the public to speak at the March 6, 2006 meeting and no action was taken by the Council. Therefore, this is not in violation of any Open Meetings Laws.

4. The Tripp City Council did not post a notice of meeting for a special meeting on March 13, 2006; however, the record is insufficient to determine if the circumstances permitted the required posting. Therefore, no decision will be made by this commission.
5. At the special meeting held on March 13, 2006, the Tripp City Council took action in an executive session in violation of SDCL Chapter 1-25 and is hereby subject to a public reprimand.

REPRIMAND

The City of Tripp is hereby publicly reprimanded for violations of the South Dakota Open Meetings Law.

Commission Chair Steele and Commission Members Beck, Brenner, and Reedstrom concur.