

December 31, 2020

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN)	OMC 2020-01
MEETINGS COMPLAINT AGAINST)	
BOARD OF TRUSTEES FOR THE)	FINDINGS OF FACT,
CITY OF WARD – MOODY COUNTY)	CONCLUSIONS OF LAW AND
)	DECISION

The above captioned matter was heard before the South Dakota Open Meetings Commission (Commission) on October 23, 2020. Complainant, Tom Kampmann, appeared personally and without counsel. The Board of Trustees for the City of Ward appeared through counsel Steven J. Britzman. Prior to the hearing, the Commission reviewed the written submissions of the parties as well as any other exhibit, pleading or paper on file herein. Based upon the materials submitted, and the arguments of the parties, the Commission enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Commission takes official notice that the City of Ward is located in Moody County, South Dakota, has been organized and operated according to applicable provisions of South Dakota Codified Law, and is categorized as a Third-Class municipality.
2. The Commission further takes notice that the Board of Trustees of the City of Ward is a public body elected pursuant to applicable provisions of state law to govern the City of Ward.

3. At all times pertinent to this matter, the Board of Trustees consisted of three members.

4. In September 2019, the Board of Trustees solicited bids for snow removal in the City of Ward. No bids to perform snow removal were received.

5. During the November 4, 2019 Board of Trustees meeting, it was suggested that the Board President, Scott Handberg, contact Elias Stoltzfus who had provided snow removal the previous year.

6. The objective of the visit to Stoltzfus was to determine why he no longer wanted to perform snow removal for the City of Ward.

7. After the November 4 meeting, Handberg contacted Stoltzfus who insisted that Handberg come to the Stoltzfus farm to discuss any complaints about Stoltzfus's snow removal experience in the City of Ward the previous winter.

8. Handberg asked the other Trustees to also attend the meeting with Stoltzfus to avoid having to repeat his conversation with Stoltzfus,.

9. On November 8, 2019, the full Board of Trustees met with Elias Stoltzfus at his residence to discuss snow removal for the City of Ward.

10. Stoltzfus relayed his concerns with removing snow in Ward – he indicated that he would like more money to remove snow, and he relayed that in previous years citizens would call him directly to complain about snow removal.

11. The Board of Trustees indicated that they would discuss snow removal at the next Board meeting. Because snow was forecasted for the next day, the Board of Trustees asked Stoltzfus to perform snow removal in the City of Ward without a contract. Stoltzfus agreed.

12. At the December 3, 2019 meeting of the Board of Trustees a new snow removal contract between the City of Ward and Stoltzfus was discussed and approved.

13. On November 15, 2019, Tom Kampmann submitted an open meetings complaint to the Moody County Sheriff's Office. Mr. Kampmann is a resident of the City of Ward and owns a business located in the City.

14. Mr. Kampmann's complaint alleged that a quorum of the Board of Trustees for the City of Ward met at the Stoltzfus farm without giving proper notice of the meeting to the public in violation of SDCL § 1-25-1.1.

15. On January 22, 2020, Moody County State's Attorney Paul M. Lewis forwarded the complaint to the Commission pursuant to SDCL 1-25-6(3).

16. SDCL 1-25-1.1 states in pertinent part: "[e]ach political subdivision shall provide public notice, with proposed agenda, that is visible, readable, and accessible for at least an entire, continuous twenty-four hours immediately preceding any meeting, by posting a copy of the notice, visible to the public, at the principal office of the public body holding the meeting...."

17. In responding to the complaint, the Board of Trustees asserted that the notice provision of SDCL 1-25-1.1 did not apply to the meeting held with

Stoltzfus on November 8, 2019. The Board of Trustees argued that the meeting constituted a negotiation for services, authorized under SDCL ch. 5-18A, because no snow removal bids had been received. Alternatively, the Board of Trustees argued that the meeting did not require notice under SDCL 1-25-1.1 because of the exception in SDCL 1-25-1 allowing a quorum of trustees for a third-class municipality to meet without official public notice to carry out ministerial functions of the municipality, or undertake a factual investigation related to public safety.

18. SDCL 1-25-1 states in pertinent part: “[i]f a quorum of township supervisors, road district trustees, or trustees for a municipality of the third class meet solely for purposed of implementing previously publicly-adopted policy, carrying out ministerial functions of that township, district, or municipality, or undertaking a factual investigation of conditions related to public safety, the meeting is not subject to the provisions of this chapter.”

19. At the hearing of this matter, the Board of Trustees asserted that the meeting with Stoltzfus was a factual investigation related to public safety and under those conditions fell under the exception found in SDCL 1-25-1. The Board of Trustees noted that the City of Ward has a duty to keep its streets clean and unobstructed which renders snow removal a public safety concern.

20. SDCL 9-30-2 states in pertinent part: “[e]very municipality shall have power to regulate the use of sidewalks, streets, alleys, wharves, parks,

and public grounds, to provide for cleaning the same, to prevent and remove obstructions and encroachments upon the same[.]”

21. At the hearing of this matter, it was agreed by both parties that snowfall was imminent at the time the Board of Trustees met with Stoltzfus.

22. At the hearing of this matter, the Board of Trustees agreed that it was not necessary for a quorum of the Board to attend the meeting with Stoltzfus.

23. Any Finding of Fact more appropriately labeled as a Conclusion of Law is hereby re-designated as such and incorporated below therein.

CONCLUSIONS OF LAW

1. The Board of Trustees for the City of Ward, as the governing body of the City of Ward, Moody County, South Dakota is a public body subject to the open meeting requirements of SDCL ch. 1-25. The Open Meeting Commission has jurisdiction over this matter pursuant to SDCL ch. 1-25.

2. The plain language of SDCL 1-25-1 creates an exemption from the open meetings requirements of SDCL ch. 1-25 for the trustees of a third-class municipality that “meet solely for purposes of implementing previously adopted public policy, carrying out ministerial functions of that township, ... or undertaking a factual investigation of conditions related to public safety....”

3. The South Dakota Legislature has authorized municipalities to provide for the cleaning of streets and the removal of obstructions upon streets. Snow that is allowed to accumulate on public streets is a public safety concern

for any municipality. Accumulated snow increases the likelihood of accidents and injury to both motor vehicle operators and pedestrians. Moreover, accumulated snow potentially hinders the access of first responders in emergency situations.

4. Based upon the materials in the record and the testimony presented at the hearing of this matter, the Commission concludes the Board of Trustees for the City of Ward did not violate the South Dakota Open Meetings Laws. The exemption granted in SDCL 1-25-1 applies to the facts of this matter; the meeting of a quorum of the Board of Trustees at Stoltzfus Farm on November 8, 2019, was a meeting to undertake a factual investigation into conditions related to public safety. Because of this exemption, the meeting did not require public notice pursuant to SDCL 1-25-1.1.

5. Any Conclusion of Law more appropriately labeled as a Finding of Fact is hereby re-designated as such and incorporated above therein.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the South Dakota Open Meetings Commission hereby determines the Board of Trustees for the City of Ward did not violate the South Dakota Open Meetings Laws in regard to the facts and allegations raised by the complaint filed in this matter.

Decision entered by Commissioners **Reedstrom (Chair), Hoffman, Tracy, & Wendt.**

OMC 2020-01
Board of Trustees City of Ward
Findings and Conclusions

Commissioner **Sovell** was absent from the meeting when the matter was heard and abstained from any final action by the Commission.