

December 31, 2020

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN)	OMC 2020-04
MEETINGS COMPLAINT AGAINST)	
PIERRE CITY COMMISSION –)	FINDINGS OF FACT,
HUGHES COUNTY)	CONCLUSIONS OF LAW, &
)	DECISION

The above captioned matter was heard before a quorum of the South Dakota Open Meetings Commission (Commission) on October 23, 2020. Complainant, Caleb Gilkerson did not appear before the Commission. The Pierre City Commission appeared through counsel Lindsey Riter-Rapp. 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 Pierre is located in Hughes County, South Dakota, and has been organized and operated according to applicable provisions of South Dakota Codified Law.
2. The Commission further takes notice that the Pierre City Commission is a public body elected pursuant to applicable provisions of state law to govern the City of Pierre.

OMC 2020-04
Pierre City Commission
Findings and Conclusions

3. The Pierre City Commission was scheduled to meet on April 7, 2020. On April 6, to comply with the requirements of SDCL 1-25-1.1, the Finance Officer for the City of Pierre physically posted a copy of the April 7 agenda at the Pierre City Hall and emailed a copy of the agenda to all interested parties. The Finance Officer also attempted to publish a copy of the agenda on the Pierre city webpage (cityofpierre.org), as required by SDCL 1-25-1.1, but that attempt was unsuccessful.

4. According to the City Commission, when the Finance Officer attempted to publish the April 7 agenda on the City's website, a site error prevented the agenda from being able to be viewed by the public. The agenda was posted to the website in draft form only but was not published and available to be viewed by the public. This error was not noticed until the morning of April 7, at which time it was immediately corrected by the Finance Officer and the agenda was successfully published on the City's website.

5. In response to the failure to timely post to the website, the City Commission discussed the error with its website host. The website host has not been able to identify what prevented the agenda from being published on the City's website. The City Commission also implemented the use of a website generated confirmation to confirm publication of future agendas on the website. And, the City Commission has started the process for electronically publishing the agenda earlier in the day to ensure that time exists to identify

and correct any future issues before the twenty-four-hour deadline in SDCL 1-25-1.1 expires.

6. SDCL 1-25-1.1 reads in pertinent part:

Each 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 official meeting, by posting a copy of the notice, visible to the public, at the principal office of the political subdivision holding the meeting.... The notice shall also be posted on the political subdivision's website upon dissemination of the notice, if a website exists.

7. 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 Pierre City Commission, as the governing body of the City of Pierre, 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. SDCL 1-25-1.1 requires political subdivisions to publish proposed agendas on the political subdivision's website (if one exists) at least an "entire [and] continuous twenty-four hours immediately preceding any official meeting[.]"

3. It is not disputed that the City of Pierre maintains a website where agenda and meeting information is posted in the normal course of City business.

OMC 2020-04
Pierre City Commission
Findings and Conclusions

4. The Pierre City Commission, through their Finance Officer, undertook almost all reasonable actions necessary to comply with the requirements of SDCL 1-25-1.1. Had the Finance Officer posted the agenda earlier in the day on April 6 and checked to ensure publication prior to the expiration of the statutory twenty-four-hour period, the Commission is confident no violation of the open meetings laws would have occurred in this instance. The Commission concludes that the error that occurred in this matter is a technical and unintentional violation of SDCL 1-25-1.1.

5. Based upon the materials in the record and the testimony presented at the hearing of this matter, the Commission concludes the Pierre City Commission did violate the South Dakota Open Meetings Laws. SDCL 1-25-1.1 requires publication of a proposed agenda on the political subdivision's website (if one exists) at least twenty-four hours prior to an official meeting. The Pierre City Commission failed to ensure that the proposed agenda for its April 7, 2020 meeting was published on the City of Pierre website for at least twenty-four hours preceding the meeting.

6. 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 REPRIMANDS the Pierre City Commission for a violation of SDCL 1-25-1.1 in that the City Commission failed

OMC 2020-04
Pierre City Commission
Findings and Conclusions

to post a copy of the proposed agenda for the City Commission's April 7, 2020, meeting on the City of Pierre's website for an entire and continuous twenty-four hours preceding the meeting.

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

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