

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN)	OMC 2024-07
MEETINGS COMPLAINT AGAINST)	
PENNINGTON COUNTY BOARD OF)	FINDINGS OF FACT,
COMMISSIONERS – PENNINGTON)	CONCLUSIONS OF LAW, &
COUNTY)	DECISION

The above captioned matter was heard before the South Dakota Open Meetings Commission (hereafter “Commission”) on November 25, 2024.

Complainants, Commissioners Travis Lasseter and Deb Hadcock, appeared personally. The Pennington County Board of Commissioners appeared through Chairman Lloyd Lacroix, Vice-Chair Ron Rossknecht, and Commissioner Gary Drewes. 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 solely upon the materials submitted, the Commission enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Commission takes official notice that Pennington County is a political subdivision of the State of South Dakota created by the Legislature and duly organized and operated according to applicable provisions of South Dakota Codified Law.

2. The Commission further takes notice that the Pennington County Board of Commissioners (hereafter “Board of Commissioners”) is a public body

elected pursuant to applicable provisions of state law to govern Pennington County.

3. On June 6, 2023, the Board of Commissioners held a regularly scheduled meeting. During the meeting, the Board of Commissioners went into executive session pursuant to SDCL 1-25-2(1) & 1-25-2(3). It was specified in the meeting agenda that the discussion under SDCL 1-25-2(1) would be annual evaluations of county department heads.

4. During the June 6, 2023, executive session, the Board of Commissioners directed the Pennington County Human Resources director to conduct a wage study and market analysis for department heads.

5. On November 7, 2023, the Board of Commissioners held a regularly scheduled meeting during which the Board of Commissioners entered executive session pursuant to SDCL 1-25-2(1) to conduct the annual department head evaluation of the Pennington County Highway Superintendent.

6. Prior to the November 7, 2023, meeting, the Highway Superintendent sent a compensation exception request to Pennington County Human Resources requesting a wage adjustment for himself and the Assistant Highway Superintendent.

7. During the November 7, 2023, executive session, the Board of Commissioners discussed the compensation exception request from the Highway Superintendent. The Assistant Highway Superintendent was present

in executive session for wage adjustment discussion and then left the executive session for the Highway Superintendent's annual evaluation.

8. Formal action was taken at the November 7, 2023, meeting to deny the Highway Superintendent's request after the Board of Commissioners returned to general session. The denial of the request was not reflected on the agenda for the meeting, and no motion was made to amend the agenda prior to the agenda's approval.

9. Complainants, Pennington County Commissioners Travis Lasseter and Deb Hadcock, submitted an open meetings complaint to the Pennington County State's Attorney on November 20, 2023. The complaint alleged that the Board of Commissioners violated the open meetings laws on June 6, 2023, by directing the County Human Resources Director to conduct a wage study and market analysis while in executive session. The complaint further alleged that the Board of Commissioners violated the open meetings laws on November 7, 2023, by discussing the compensation exception request from the Highway Superintendent while in executive session, and by taking action to deny the request when that item was not on the November 7, 2023, meeting agenda.

10. On February 2, 2024, the Pennington County State's Attorney's Office requested that the Lincoln County State's Attorney's Office review the complaint. The Lincoln County State's Attorney's Office forwarded the complaint to the Commission, pursuant to SDCL § 1-25-6.1(3), on May 24, 2024.

11. Before the Commission, the Board of Commissioners asserted that no formal action was taken in executive session on June 6, 2023, to direct a wage study and market analysis. The Board of Commissioners argued that consensus was reached among the Board of Commissioners that a wage study and market analysis would be helpful to the Board, but no formal vote was taken in executive session. Also, it was noted that research and review of comparable employee market compensation is a routine responsibility for the Human Resources department.

12. Regarding the November 7, 2023, executive session, the Board of Commissioners responded by asserting that the discussion and review of comparable job compensation during the Highway Superintendent's annual evaluation fell within the scope of personnel matters authorized by SDCL 1-25-2(1) to be discussed in executive session. Following executive session, the action taken by the Board of Commissioners was directly related to the personnel matter properly identified on the meeting agenda.

13. SDCL 1-25-1 requires that the official meetings of all public bodies be open to the public. Further, SDCL 1-25-1.1. requires that notice be given of all meetings through the posting of a proposed agenda.

14. SDCL 1-25-2(1) allows a public body to enter executive session to "[discuss] the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee. The term, employee, does not include any independent contractor[.]"

15. SDCL 1-25-2 requires that “any official action concerning matters pursuant to this section shall be made at an open official meeting.”

16. 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 Pennington County Board of Commissioners, as the governing body of Pennington County, South Dakota, is a public body subject to the open meetings requirements of SDCL ch. 1-25. The Open Meeting Commission has jurisdiction over this matter pursuant to SDCL ch. 1-25.

2. SDCL 1-25-2 requires that all formal official action stemming from an executive session must be taken in an open official meeting.

3. Conducting a wage study and market analysis is a routine responsibility of the Human Resources Director. Reaching consensus in executive session that such a study and analysis should be conducted was an information seeking directive to a county employee. The Commission does not view the Board of Commissioners’ action on June 6, 2023, as taking formal action in executive session.

4. The Commission concludes that the Board of Commissioners did not violate the open meetings laws on June 6, 2023, by directing the Pennington County Human Resources Director to conduct a department head wage study and market analysis while in executive session.

5. The Commission notes that the provisions of SDCL 1-25-2 are discretionary and not mandatory. The Board of Commissioners could have directed the Human Resources Director to engage in the wage study and market analysis in open public session. That practice would have been the most informative to the public, putting the public on notice that such a study and analysis was being conducted.

6. The plain language of SDCL 1-25-2(1) limits application of that section to the discussion in executive session of the “qualifications, competence, performance, character or fitness” of an employee. Discussion of wages or compensation is conspicuously absent from the statutory language.

7. The Commission recognizes that it may be difficult to separate a discussion of compensation from a discussion of an employee’s performance, character, or fitness. However, SDCL 1-25-2(1) does not allow for discussion of an employee’s compensation in executive session. By discussing compensation in executive session, a public body provides no ability for a member of the public to know that a pay increase is being considered, and no notice to attend a meeting to comment on whether a pay increase for an employee is appropriate.

8. The Commission concludes that the Pennington County Board of Commissioners did violate the open meetings laws on November 7, 2023, by discussing in executive session the compensation exception presented by the Highway Superintendent. It was the responsibility of the Board of

Commissioners to recognize that the compensation request was outside the scope of executive session under SDCL 1-25-2(1), and direct that the compensation discussion be placed on the agenda for the next official meeting.

9. The agenda requirement of SDCL 1-25-1.1 exists to provide the public advance notice of the items to be discussed or acted upon at an official meeting. While not specifically included in the language of SDCL ch. 1-25, it is implied that a public body will take action on those items enumerated on the agenda. The agenda for the Board of Commissioner's November 7 meeting does not provide the public with sufficient information to conclude that action would be taken concerning a compensation request from a County employee.

10. The Commission concludes that the Pennington County Board of Commissioners did violate the open meetings laws by taking action on an item that was not included on the agenda for its November 7, 2023, meeting.

11. 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 Pennington County Board of Commissioners did not violate the South Dakota open meetings laws in regard on June 6, 2023, when it directed in executive session its Human Resources Director to conduct a wage study and market analysis for the County's department heads.

However, based upon the foregoing, the South Dakota Open Meetings Commission hereby **REPRIMANDS** the Pennington County Board of Commissioners for violating the South Dakota Open Meetings Laws on November 7, 2023, by discussing wages or compensation in executive session, and by taking official action on an item not included on the November 7 meeting agenda.

Decision entered by Commissioners **A. Hoffman, K. Hoffman, Russell, & Smith**. Commissioner **Sovell** (Chair) was absent and took no part in consideration of the written decision.

Dated this 12th day of May, 2025.

SOUTH DAKOTA OPEN MEETINGS COMMISSION



Katelynn Hoffman, Vice-Chair