

STATE OF SOUTH DAKOTA  
OPEN MEETINGS COMMISSION

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IN THE MATTER OF OPEN	)	OMC 2024-09
MEETINGS COMPLAINT AGAINST	)	
CITY OF LEAD CITY COMMISSION	)	FINDINGS OF FACT,
– LAWRENCE COUNTY	)	CONCLUSIONS OF LAW, &
	)	DECISION

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

Complainant, Gordon Phillips, appeared personally. The City of Lead City Commission appeared through counsel, Tim Johns. 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 Lead is a Second-Class municipality located in Lawrence 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 City Commission for the City of Lead (hereafter “City Commission”) is the public body elected pursuant to applicable provisions of state law to govern the City of Lead.

3. On January 24, 2024, Gordon Phillips emailed Lead City Commissioner Rob Carr to inquire when the City Commission authorized a city

employee to lobby in Pierre for a bill to provide funding for a new community center in Lead.

4. Commissioner Carr responded by saying “I do believe we authorized [the employee] to go in support of the bill. Because [the bill] was dropping between meetings ... they polled us via email.”

5. On May 8, 2024, Mr. Phillips submitted an open meetings violation to the Lawrence County State’s Attorney. The complaint alleged, in part, that the email poll referenced above constituted official action by the City Commission to approve the expenditure of public funds outside an official public meeting.

6. SDCL 1-25-12(3) defines an official meeting of a public body to be “any meeting of a quorum of a public body at which official business of the public body is discussed or decided, or public policy is formulated, whether in person or by means of teleconference.”

7. A “teleconference” is defined by SDCL 1-25-12(4) as “information exchanged by any audio, video, or electronic medium, including the internet.”

8. SDCL 1-25-1 requires official meetings of public bodies to be open to the public except under certain circumstances. SDCL 1-25-1.1 requires that proper notice be given of all official meetings of all local government public bodies.

9. The Lawrence County State’s Attorney’s Office forwarded the complaint to the Commission pursuant to SDCL 1-25-6(3). The State’s Attorney’s Office indicated that there were open questions concerning the

complaint, and it was unable to conclude whether the City Commission had violated SDCL 1-25-1.

10. In its written response, the City Commission indicated that the City Administrator authorized two employees to testify before the Legislature in support of the bill brought concerning the Lead Community Center. According to the City Commission's response, at no time did it authorize payment of public funds to the two City employees to represent the City at the legislative hearing.

11. The City Commission's response included a written statement from the City Administrator indicating that he authorized un-paid leave for the two employees to attend the bill hearing in Pierre and advised them that the City would not reimburse any travel expenses. According to the City Administrator, he did email the City Commission but only received a response from the Mayor.

12. Before the Commission, the City Commission asserted that the email poll from the City Administrator was never answered by any of the Commissioners except the Mayor. The City Commission reaffirmed that it was the City Administrator, acting under his authority, who authorized the employees to travel to Pierre and testify before the Legislature. The City Commission also stated that no public funds were expended by the City for the employees to testify before the Legislature, the employees were allowed to attend using their personal leave and were denied any travel expenditure reimbursement.

13. 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 City of Lead City Commission, as the governing body of Lead 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 1-25-1 clearly contemplates and requires that official action of a public body may only be taken at a properly noticed official meeting of the public body. The open meeting statutes are intended to afford members of the public the ability to know when official action of a public body may occur.

3. An email discussion that involves a quorum of a public body constitutes a teleconference and qualifies as an official meeting of that body.

4. The Commission, however, feels that it is unreasonable to hold public bodies responsible for every email that members of the public body may receive. Many of those emails are sent outside of the control of the members of the public body. The simple receipt of an email, addressed to a quorum of a public body, that discusses the official business or public policy of the body is not a per se violation of the state open meetings laws.

5. This Commission has previously reprimanded public bodies for taking official action through email communication outside of a public meeting. *See in re City of Canton*, OMC # 17-04. In the *City of Canton* matter, an email

discussion among the Canton City Commission resulted in the expenditure of public funds.

6. In this matter, an email was sent to a quorum of the City Commission by the City Administrator. The email sought a discussion by the City Commission concerning the employees' request to attend the legislative hearing. The email was sent with the intent to obtain a response from the City Commissioners, however, only the Mayor responded.

7. It is clear, though, that no discussion of official business or public policy amongst a quorum of the City Commission took place through the email sent by the City Administrator. There were no responses received from the City Commissioners. Further, it is clear that no public funds were expended or authorized by the City Commission concerning this matter. All action authorizing the employees to attend the legislative hearing was carried out by the City Administrator.

8. Because no discussion occurred in response to the email from the City Administrator, and no official action was taken by the City Commission, The Commission concludes the Lead City Commission did not violate the state open meetings laws in this matter.

9. The Commission does note, however, that if responses to the City Administrator's email had been received the result of this decision would have been different. Official action is not required to find a violation of the open meetings laws, discussion of official business or public policy outside of an official meeting would be a violation of the open meetings laws.

10. The Commission also notes that public bodies do maintain authority and control over their staff. The public body is responsible for training their staff concerning the state open meetings laws, and responsible for establishing procedures that comply with the open meetings laws. Public bodies should ensure that their staff do not attempt to engage a quorum of the public body in a discussion of official business or public policy outside of an official 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 City of Lead City Commission 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 **A. Hoffman, K. Hoffman, Russell, & Smith**. Commissioner **Sovell** (Chair) was absent and took no part in consideration of the written decision.

Dated this 12<sup>th</sup> day of May, 2025.

SOUTH DAKOTA OPEN MEETINGS COMMISSION

  
Katelynn Hoffman, Vice-Chair