

STATE OF SOUTH DAKOTA  
OPEN MEETINGS COMMISSION

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IN THE MATTER OF OPEN	)	OMC 2024-10
MEETINGS COMPLAINT AGAINST	)	
GREEN VALLEY SANITARY	)	FINDINGS OF FACT,
DISTRICT – PENNINGTON	)	CONCLUSIONS OF LAW, &
COUNTY	)	DECISION

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The above captioned matter was heard before the South Dakota Open Meetings Commission (hereafter “Commission”) on November 25, 2024, and concluded on February 25, 2025. Complainant, Steve Myers appeared personally on both dates. The Green Valley Sanitary District appeared on both dates through Counsel Erica Olson. 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 Green Valley Sanitary District is located in Pennington 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 Green Valley Sanitary District Board of Trustees (hereafter “Board of Trustees”) is the public

body elected pursuant to applicable provisions of state law to govern the Green Valley Sanitary District.

3. On January 4, 2022, the Board of Trustees took out a \$200,000 loan with Black Hills Federal Credit Union. The loan was taken out to help pay engineering costs incurred by the District in construction of a sewer project to benefit the District. The loan was signed for by each of the three currently serving members of the Board of Trustees.

4. The loan was discussed at multiple meetings in the months before securing the loan. On June 9, 2021, the Board of Trustees held a regularly scheduled meeting. The minutes of that meeting indicate the Board of Trustees discussed potential interim financing for the sanitation project with Black Hills Federal Credit Union. No formal vote to secure a loan was documented in the minutes of this meeting.

5. On November 8, 2021, the Board of Trustees held a regularly scheduled meeting. The minutes of that meeting reflect further contemplation by the Board of Trustees of obtaining a short-term loan to help fund a sanitation project. No formal vote to secure a loan was documented in the minutes of this meeting.

6. The Board of Trustees also met in a special meeting on November 17, 2021, held primarily for the purpose of acquiring the \$200,000 loan from Black Hills Federal Credit Union. No formal vote regarding the loan was documented in the minutes of this meeting. The meeting minutes report

discussion of the loan and that next steps regarding the loan would be pursued by the Board of Trustees.

7. On December 8, 2021, the Board of Trustees met, and the meeting minutes indicate that updated documentation was needed to secure the loan. No formal vote regarding the loan was documented in the minutes of this meeting.

8. At no time was an official resolution brought before the Board of Trustees for approval to take out the loan. And there are no minutes which document a formal vote of the Board of Trustees to enter into the loan.

9. Steve Myers submitted an open meetings violation to the Pennington County State's Attorney on February 26, 2024. Mr. Myers essentially alleged that the Board of Trustees took formal action outside an official public meeting when it entered into the loan discussed above.

10. On June 18, 2024, Pennington County State's Attorney Lara Roetzel forwarded the complaint to the Commission pursuant to SDCL 1-25-6(3).

11. The Board of Trustees provided a written response to the complaint in which it asserted that all meetings in question were open to the public with agendas posted in advance in compliance with SDCL 1-25-1.1. The Board of Trustees also noted that the requirement found in SDCL 1-25-3 to document formal votes in the meeting minutes only applies to the State, and not to local government bodies.

12. The Board of Trustees provided affidavits indicating that a majority of the Board of Trustees agreed that the loan had been discussed at several meetings and that all were in agreement that the loan was necessary. All Trustees also do not recall a specific vote approving the loan.

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 1-25-3 requires the State to “keep detailed minutes of its proceedings of all regular or special meetings.” The minutes are required to reflect how “each individual member voted on any motion on which a roll call vote is taken.”

15. SDCL 34A-5-24 states that “[a] majority of the board of trustees constitutes a quorum but a small number adjourn from day to day. A concurrence of the majority is necessary to any action of the board.”

16. SDCL 34A-5-25 requires a board of trustees to “establish an office within the sanitary district and shall maintain a full, complete, accurate, and itemized account of all its proceedings, ordinances, orders, resolutions, and regulations.”

17. 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 Green Valley Sanitary District Board of Trustees, as the governing body of the Green Valley Sanitary District, 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. The Commission concludes that SDCL 1-25-1 and 1-25-1.1 clearly contemplate that official action of a public body may only be taken at a properly noticed official meeting of the 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. However, the statutes specific to sanitary districts only require “a concurrence of the majority” for a board of sanitary district trustees to take formal action. SDCL 34A-5-24. What constitutes proof of a concurrence is not defined in state law.
4. There is no provision found in SDCL ch. 1-25, or SDCL ch. 34A-5, that requires formal action of a sanitary district must be proceeded by a motion, second, and vote of a board of trustees.
5. Sanitary Districts are also not required to keep and post minutes of their meetings.
6. Here, the Board of Trustees considered the loan at issue at several meetings prior to undertaking the loan in January 2022. The record evinces

that a concurrence of the Trustees was reached in undertaking the loan. The Commission concludes that the Green Valley Sanitary District Board of Trustees did not violate the state open meetings law by taking formal action outside an official meeting.

7. 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 Green Valley Sanitary District Board of Trustees 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