

March 19, 2012

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN	)	FINDINGS OF FACT AND
MEETING COMPLAINTS 11-06 and	)	CONCLUSIONS OF LAW
11-07, ABERDEEN CITY COUNCIL	)	AND REPRIMAND
AND ABERDEEN PLANNING	)	
COMMISSION	)	

South Dakota has enacted a statute requiring meetings of local governing bodies to take place in public forum, SDCL ch. 1-25. Those meetings may only take place after compliance with notice requirements found in SDCL 1-25-1.1, which provides in part that “all public bodies shall provide public notice, with proposed agenda, at least twenty-four hours prior to any meeting, by posting a copy of the notice, visible to the public, at the principle office of the public body holding the meeting....” Violation of this statute is a Class 2 misdemeanor.

DISCUSSION AND DECISION

This matter comes before the Open Meeting Commission under the complaint of Betty Breck (“Petitioner”) as to the Aberdeen City Council and Aberdeen Planning Commission’s failure to provide proper notice of its meeting by posting an agenda at least 24 hours before the meeting at a place visible to the public. Her complaint alleges that Aberdeen City Council and Aberdeen Planning Commission failed to post this agenda four separate times, as follows:

1. Petitioner’s Complaint alleged that on September 15, 2008, at 5:30 a.m., the City Council agenda for the regular meeting on September 15, 2008 was

not visible to the public from the outside of the building after hours because the doors were locked.

2. Petitioner's Complaint alleged that on September 15, 2008, at 7:00 p.m., the City Planning Commission agenda for the regular meeting on September 16, 2008 was not visible to the public from the outside of the building after hours because the doors were locked.

3. Petitioner's Complaint alleged that on July 27, 2009, the City Council held a special meeting without first posting an agenda or notifying the press.

4. Petitioner's Complaint alleged that on September 7, 2009, at 11:10 p.m. the City Council agenda for the regular meeting held on September 8, 2009 was not visible to the public from the outside of the building after hours because the doors were locked.

With respect to Items 1, 2, and 4 no evidence was presented that the agendas were not posted inside City Hall at the time Complainant visited City Hall. Indeed, Complainant believes that the agenda was posted at City Hall "outside the Auditor's office."

Respondent City of Aberdeen admitted the allegations contained in Item 3.

Petitioner subsequently conceded on March 8, 2012 that the allegations in Paragraphs 1, 2, and 4 above are moot insofar as the 2012 legislature enacted HB 1131 and HB 1131 was signed by the Governor on March 2, 2012.

The Open Meetings Commission therefore makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Aberdeen City Council is the governing body of a political subdivision of the State and, therefore, an entity subject to the open meeting requirements of SDCL ch. 1-25.

2. The Aberdeen City Council caused an agenda to be posted at City Hall at least 24 hours prior to their regularly scheduled meeting on Monday, September 15, 2008, which agenda was visible to the public during normal business hours.

3. The Aberdeen City Planning Commission caused an agenda to be posted at least 24 hours prior to their regularly scheduled meeting on Tuesday, September 16, 2008, which agenda was visible to the public during normal business hours.

4. The Aberdeen City Council caused an agenda to be posted at least 24 hours prior to their regularly scheduled meeting on Tuesday, September 8, 2009, which agenda was visible to the public during normal business hours.

5. The Aberdeen City Council has admitted that it did not publish or post a notice or agenda for the special meeting held on July 27, 2009.

CONCLUSIONS OF LAW

1. The Aberdeen City Council and the Aberdeen City Planning Commission are entities subject to the provisions of the Open Meeting Law, SDCL ch. 1-25.

2. Petitioner's Complaints regarding the September 15 and 16, 2008 meetings and the September 8, 2009 meeting should be dismissed because the 2012 legislature enacted HB 1131 and the Petitioner conceded on March 8, 2012 that they may be dismissed.

3. The City Council failed to publish or post a notice or agenda for the special meeting held on July 27, 2009, and should be reprimanded therefor.

REPRIMAND

The City of Aberdeen is hereby reprimanded for its violation of the South Dakota Open Meetings Law on July 27, 2009.

Issued by Commissioners Rothschadl (Chair), Brenner, Reedstrom, Sovell and Steele.