



October 15, 2004

Glenn A. Brenner
Pennington County State's Attorney
300 Kansas City Street
Rapid City, SD 57701

Re: South Dakota Science and Technology Authority meeting

Mr. Brenner,

The South Dakota Science and Technology Authority Board met in Rapid City on Sept. 28 and 29. The board was established by the Legislature in February to pursue establishing an underground science laboratory in the old Homestake Mine in Lead.

During the two-day meeting the board spent more than nine hours in executive session. The first time they entered closed session — with Gov. Rounds present — they voted to do so on a motion specifying what was to be discussed: Contracts. That closed session lasted past the scheduled morning meeting hours and went through lunch, which was a published agenda item. At least four subsequent moves into closed session were made without specifying the reason.

After the two-day meeting, board Chair Dave Snyder told a reporter that budget adoption, committee appointments and investment policy decisions — all published agenda items — were postponed to a later meeting. No decision on these postponements was made in open session. If they were postponed to a later meeting, there must have been some discussion about them in closed session. These discussions are clearly not covered under any executive session exemption and are therefore illegal. Setting the next meeting date was also an agenda item. The next date was never discussed in open session but, at some point, Dec. 2 was chosen.

Furthermore, when a representative from contractor Dynatec, Syd Devries, began a presentation during open session on the 29th, he was cut off by Director Richard Gowen who said Devries should continue the presentation at a tour of the mine planned for later that day. Devries' presentation was a scheduled agenda item slated for open session. The board then went into unspecified executive session. During the executive session, the tour — another published agenda item —

was cancelled, according to Homestake chief Karl Burke. When asked the following day about his presentation, Devries said that it "might have come up" in executive session.

During one open session of the meeting, several representatives of the Black Hills Vision group presented their program to the science authority board. Following the presentation, authority board member Casey Peterson of Rapid City told Chairman Dave Snyder that the board should discuss Black Hills Vision during a later, closed session. Gowen and other board members agreed. Please find the Black Hills Vision proposal enclosed. We find nothing in it that qualifies for closed discussion by the South Dakota Science and Technology Authority board.

The Governor and the Legislature deserve support for the vision they exhibited when they established the South Dakota Science and Technology Authority. It is essential for the economic future of the area and the state. But the fact that the panel is pursuing such a vital public interest is not a reason to shield its work from the public. Indeed, the very magnitude of the endeavor demands that the public be a full partner.

The Legislature granted this commission extra latitude to close meetings but the legislation clearly states that meetings are to be open pursuant to 1-25. We respectfully ask you to investigate — and/or turn over to the South Dakota Open Meetings Commission — our open meeting complaint so that a formal determination can be made if any discussions were illegally held during the more than nine hours of executive session.

Of particular interest to the public is the last item on the board's September agenda: Approval of Contracts. All public contracts must be approved in open session. No such action was taken in Rapid City on Sept. 28 or 29 and yet hundreds of thousands of tax dollars have been committed by the South Dakota Science and Technology Authority board. According to the commission's financial statements, some \$309,000 has already been allocated including contracts let to Dynatec, the state Engineer's Office, unspecified "science contracts," \$12,000 for "media" and \$207,000 for "other contractual services." At some point, such contracts were approved. If they were so approved out of public view, the action was possibly illegal and the contracts possibly invalid.

Thank for your prompt consideration.

Sincerely,

South Dakotans for Open Government

Stewart Huntington, President
Dale Blegin, Vice President
Dave Bordewyk, Treasurer
Chuck Baldwin, Secretary
Tena Haraldson, Board member

Mary Hemlinger, Board member
Jon Hunter, Board member
Mark Millage, Board member
Jack Marsh, Board member
Tim Waltner, Board member

Enc.

8. Specifically, Affiant believes that during executive meetings, the Authority engaged in discussions of various contracts, business relationships and other matters that do not come within the strict purview of SDCL 1-25-2 (1) through (5); furthermore, Affiant believes that the motions made to go into the various executive sessions lacked the specificity required under SDCL 1-25-2.



Stewart Huntington
President - SDOG

Subscribed and sworn to before me this 25 day of July, 2005.



Notary Public - South Dakota

My commission expires: 10-24-2010