

# SOUTH DAKOTA OPEN MEETINGS COMMISSION

## MINUTES OF MEETING

February 24, 2025

Members participating: Emily Sovell, Sully County State's Attorney (Chair); Katelynn Hoffman, Turner County State's Attorney (Vice-Chair); Austin Hoffman, McPherson County State's Attorney; Lance Russell, Fall River/Oglala Lakota County State's Attorney; and Michael Smith, Clay County State's Attorney; Steve Blair and Jenna McFarlane, Office of the Attorney General, assisted the Commission.

Chair Sovell called the meeting to order at approximately 10:00 a.m. Mr. Hoffman moved to approve the proposed agenda with the additions of it being held by Microsoft Teams and discussion about future meetings; Mr. Smith seconded. A roll call vote was held; the agenda was approved by unanimous vote.

A time was provided for public comment as required by SDCL 1-25-1; no member of the public provided comment to the Commission.

### **The following is a summary (not verbatim) of the matters discussed.**

#### November 18, 2024 Minutes

Mr. Hoffman moved to approve the draft minutes of the November 18, 2024, meeting. Ms. Hoffman seconded. All members voted by roll call in favor of the motion to approve the minutes.

#### November 25, 2024 Minutes

Mr. Smith moved to approve the draft minutes of the November 25, 2024, meeting. Mr. Hoffman seconded. All members voted by roll call in favor of the motion to approve the minutes.

#### In the Matter of Open Meeting Complaint 24-10, Green Valley Sanitary District

Mr. Steven Myers appeared as the Complainant. Ms. Erika Olson appeared as counsel on behalf of Green Valley Sanitary District.

Ms. Sovell announced this was a continuation from the previous meeting held on November 25, 2024, and each party would be given fifteen minutes to present anything further on the complaint.

Mr. Myers reported that Keloland ran a story concerning whether open meeting laws apply to Sanitary Districts. Mr. Myers felt Green Valley Sanitary District (GVSD) checked all boxes including having the authority to exercise sovereign power.

Mr. Myers stated in the January 11, 2023, minutes of the GVSD there was no motion or vote on paying interest or renewing the bank loan with Black Hills Federal Credit Union. Mr. Myers asserted that the board members went in to pay the interest on the loan and renewed it without approval.

Mr. Myers read a bit of the January 10, 2024, minutes. Mr. Myers stated it showed GVSD was familiar with parliamentary procedure. Mr. Myers continued reading the minutes where discussion was had to meet at the Black Hills Federal Credit Union in part to renew the \$200,000 note for another twelve months.

Mr. Myers pointed out that no motion was made to go to the bank, no motion was made to pay the interest, no motion was made to renew the loan and no vote was taken. But the board members went to the Black Hills Federal Credit Union paid the interest and renewed the loan.

Mr. Myers alleged that the loan and the past two renewals were done with three board signatures, but no motions were made.

Mr. Myers stated GVSD has paid \$28,259.07 in interest on the loan. Mr. Myers relayed that he felt, the facts of January 4, 2022, were that three GVSD board members went to Black Hills Federal Credit Union, and each signed for the \$200,000 loan. Mr. Myers asserted that the GVSD minutes support there was no resolution, no motion and no vote on the loan. Mr. Myers believed the GVSD board members who signed are responsible for the loan and all the interest paid by GVSD resident taxes. Mr. Myer introduced a copy of his presentation into the record.

Ms. Olson objected to the materials submitted by Mr. Myers that may include additional issues, allegations, and evidence that were not part of the original Pennington County State's Attorney's Office investigation or were determined to have no merit by the State's Attorney.

Ms. Olson stated the only issue the State's Attorney presented to the Commission was to consider whether the loan GVSD obtained with Black Hills Federal Credit Union in January 2022 was violation of the GVSD bylaws and state law.

Ms. Olson felt that a complete review of the relevant actions and documents, and the applicable statutes, confirmed that no violation of the open meeting laws had occurred. Ms. Olson pointed out the agenda and minutes of the

GVSD confirm the loan was discussed at regular meetings which were open to the public. Affidavits of board members confirm the agendas were posted in advance of the meetings. Ms. Olson acknowledged most of the trustees recalled discussing the loan at various meetings and reaching a consensus that it was needed.

Ms. Olson wanted to address the authority of the Open Meeting Commission. Ms. Olson felt it was important to note that not all the provision of SDCL 1-25 apply to all types of entities. Ms. Olson acknowledged that GVSD is a political subdivision under SDCL 1-25-12(1), and it is a public body under SDCL 1-25-12(2). Ms. Olson went on to state that the GVSD is not considered a part of the state as the term is defined in SDCL 1-25-12(5).

Ms. Olson continued by acknowledging that the provisions of SDCL 1-25-1, requiring official meetings be open to the public, and SDCL 1-25-1.1, requiring the giving of notice of a meeting by posting an agenda at least 24 hours ahead of the meeting, do apply to GVSD. Ms. Olson asserted that SDCL 1-25-1.3, 1-25-1.4, and 1-25-3 applied only to the state and did not apply to a political subdivision like GVSD.

Ms. Olson claimed all agendas for the meetings were posted in advance of the meetings and complied with SDCL 1-25-1.1. Ms. Olson stated the agendas included information about the loan being considered, giving the public notice that the loan would be discussed at those meetings. Ms. Olson felt GVSD had substantially complied with the provisions of SDCL 1-25 when applied to it as a sanitary district.

Ms. Olson noted the minutes from the meetings did not document a specific vote. Ms. Olson argued that the provisions of SDCL 1-25-3 requiring the minutes to document each vote did not apply to a sanitary district but only to the state.

Ms. Olson stated compliance with other state laws are outside the authority and jurisdiction of the Open Meeting Commission and they should not be considered. Ms. Olson claimed the GVSD Board of Trustees considered the loan with Black Hills Federal Credit Union at several meetings with notice to the public and held public meetings in compliance with South Dakota Open Meeting Laws. There was a consensus reached at those meetings for the board of trustees to approve the loan. Ms. Olson believed for those reasons there should be no violation of the South Dakota open meeting laws.

Mr. Myers concluded by stating that the public didn't know about the loan nor the renewals and neither were voted on.

The Commission went into deliberations.

Ms. Sovell wanted to confirm for the record that Mr. Russell was not present for the beginning of the meeting but joined before presentations started for the GVSD. Mr. Russell stated that was correct; he was able to listen to everything presented.

Ms. Sovell opened the floor for discussion on whether the open meeting rules in full apply to the sanitary district the same as they do other state subdivisions.

Mr. Hoffman stated that when he looked at SDCL 34A-5-14 it stated that a sanitary district is a governmental subdivision and public body and under SDCL 1-25 the minutes requirements only pertain to the state. SDCL 34A-5 which governs sanitary districts did not have a requirement for a sanitary district to post their minutes. Mr. Hoffman believed sanitary districts are not required to post minutes.

Mr. Hoffman felt the other statute to look at would be SDCL 34A-5-22, there the last sentence simply states a concurrence of the majority is necessary for any action of the board and stated he could find no definition of the word concurrence.

Mr. Hoffman pointed out there were three affidavits from board members serving at that time saying they don't necessarily remember if or when a formal vote being taken, but all agreed there was a consensus to move forward with the loan. Mr. Hoffman personally believed the rules could be clearer and may need some legislative action, but under the statutes there was a concurrence. Mr. Hoffman explained that while GVSD are subject to SDCL 1-25-1 they did not have to print minutes and because of that he did not see a violation.

Ms. Sovell asked Mr. Blair if the Commission in the past had held a sanitary sewer district to the same standard as other state entities. Mr. Blair did not recall a previous file involving a sanitary district. He believed there may have been earlier discussion regarding a water district, but did not recall a sanitary district.

Ms. Sovell stated she understood Mr. Hoffman's comments but was concerned with reaching that conclusion. Ms. Sovell asked for other commissioners' thoughts.

Mr. Smith claimed he came to the same conclusion in his research as had Mr. Hoffman. Mr. Smith struggled to categorize the sanitary district under the definition of the state found in SDCL 1-25-12. Mr. Smith admitted that he had concern about stating there was no violation, but he believed this may be a loophole. Mr. Smith concluded that he too believed there had not been a violation.

Mr. Russell agreed stating that what had happened troubled him, but that he didn't believe the Commission had jurisdiction based upon statutes.

Ms. Hoffman stated she understood the research done by Mr. Hoffman and Mr. Smith but had great concern about not considering this a violation.

Ms. Hoffman stated that it could create a slippery slope for other entities to allege by affidavit after the fact there has been a concurrence on a matter.

Ms. Hoffman expressed she continued to struggle with the issue after having the opportunity for additional time.

Mr. Hoffman expressed he was not happy to have come to the conclusion and stated that he felt some work was needed to be done in the legislature.

Mr. Hoffman believed there should have to be a formal vote on the record and minutes should have to be posted. Mr. Hoffman noted that this matter brings some awareness to an issue that needs to be fixed.

Mr. Russell addressed the complainant stating that the Commission's jurisdiction is limited, but noting that the circuit courts have much broader jurisdiction in areas of this nature.

Mr. Hoffman made a motion on issue one and issue two finding there were no open meeting violations. Mr. Smith seconded. A roll call was held: Mr. Russell, Mr. Hoffman, Mr. Smith and Ms. Hoffman all voted aye. Ms. Sovell voted nay.

#### Discussion of future meetings

A discussion was held on scheduling the Commission's next meeting.

#### Adjournment

A motion to adjourn was made by Mr. Smith seconded by Mr. Hoffman, at approximately 10:45 a.m. Roll call was made with all Commissioners voting aye, and the Commission adjourned.

Approved on \_\_\_\_\_, 2025.

\_\_\_\_\_  
Emily Sovell, Chair  
On behalf of the Open Meeting Commission