

**August 31, 2017**

STATE OF SOUTH DAKOTA  
OPEN MEETINGS COMMISSION

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IN THE MATTER OF OPEN	)	OMC 2016-01
MEETINGS COMPLAINT AGAINST	)	
THE GROTON CITY COUNCIL	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW AND
	)	DECISION

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The above captioned matter was heard before the South Dakota Open Meetings Commission (Commission) on October 14, 2016. Complainant Betty Breck, appeared personally and without counsel. The Groton City Council was represented by Attorney Drew Johnson. Mayor Scott Hanlon, and Finance Officer Anita Lowary were also present on behalf of the City of Groton. 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 Groton is located in Brown County, South Dakota, and categorized as a Second Class municipality.
2. The Commission further takes notice that the Groton City Council is a duly organized public body elected pursuant to applicable provisions of state law and municipal ordinance to govern the City of Groton.

3. On June 20, 2016, the Groton City Council held a regularly scheduled meeting. The agenda for the meeting indicated that an executive session would be held to discuss legal or personnel matters.

4. At the close of the open meeting portion Ms. Breck was engaged in a heated discussion with Mayor Hanlon. Ms. Breck wanted to be heard by the Council regarding a memorandum she prepared on the use of executive session.

5. During the discussion between Ms. Breck and Mayor Hanlon a motion was made by a Council member to go into executive session. The motion received a second and the Mayor declared the Council to be in executive session without taking a formal vote of the Council.

6. The minutes of the June 20, 2016 meeting were amended on July 5, 2016, to indicate that the Council adjourned into executive session on a motion and second. The minutes do not indicate a vote was taken.

7. On June 27, 2016, Ms. Breck submitted an open meetings complaint to Brown County States Attorney Larry Lovrien.

8. On July 26, 2016, States Attorney Lovrien forwarded the complaint to the Commission pursuant to SDCL 1-25-6(3).

9. SDCL 1-25-2 states than an executive session of a public body may only be held “upon a majority vote of the members of such body present and voting...”

10. Ms. Breck alleged in bringing her complaint that the City Council violated SDCL 1-25-2 by entering into executive session without holding a formal vote of the Council.

11. In responding to the complaint, the City Council admitted that a violation occurred in that the Council entered executive session without taking a formal vote. The City Council stated that the error occurred due to the confusion created by the discussion between Ms. Breck and Mayor Hanlon at the time the motion to enter executive session was made. The City Council further stated that its normal practice is to take a formal vote on all motions to enter executive session.

12. 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 Groton City Council, as the governing body of City of Groton, Brown County, South Dakota is a public body subject to the open meeting 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 the plain language of SDCL 1-25-2 requires a public body to take a formal vote of the members present on any motion to enter into executive session.

3. Based upon the materials in the record and the testimony presented at the hearing of this matter, the Commission concludes the Groton

City Council did violate the South Dakota Open Meetings Laws in that the Council entered executive session without taking a formal vote of the members present.

4. 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 REPRIMANDS the Groton City Council in that the Council entered executive session without taking a vote of the members present in violation of SDCL 1-25-2.

Decision entered by Commissioners **Sovell** (Chair), **Krull**, **Reedstrom**, **Rothschadl**, & **Steele**.