

December 18, 2018

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN)	OMC 2018-02
MEETINGS COMPLAINT AGAINST)	
HOT SPRINGS SCHOOL BOARD –)	FINDINGS OF FACT,
FALL RIVER COUNTY)	CONCLUSIONS OF LAW, AND
)	DECISION

The above captioned matter was heard before the South Dakota Open Meetings Commission (Commission) on June 7, 2018. Complainant Stachia Walker appeared. The Hot Springs School Board appeared through, counsel, Patrick M. Ginsbach. 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 Hot Springs School District is a school district organized pursuant to the provisions of Title 13 of the South Dakota Codified Laws to provide and operate a school educational program in South Dakota.

2. The Commission further takes notice that the Hot Springs School Board is the public body elected pursuant to applicable provisions of state law

to govern the Hot Springs School District located in Fall River County, South Dakota.

3. During the 2017-2018 school year, the School Board learned through an independent audit that it needed to make budgetary reductions of \$422,000. This was on top of approximately \$289,000 in cuts that were made during the 2016-2017 school year.

4. The Hot Springs School District has a Master Contract with the Hot Springs Education Association. The contract is a collectively bargained agreement entered into by both parties. The agreement includes a provision governing the School Board's procedure for reducing the workforce due to budgetary concerns.

5. Article VIII, REDUCTION OR REALIGNMENT OF STAFF, of the Master Contract includes a specific procedure to be used to determine a teacher's employment status based upon a reduction in force.

6. Art. VIII, ¶ E, provides: "[t]he criteria for determining staff reductions are certification, seniority, and evaluation. Seniority shall mean the years of continuous service in the District. If two or more teachers are determined by the supervising administrator to be equally certified, the teacher with the least seniority in the Hot Springs School District will be laid off first."

7. Art. VIII, ¶ G, provides: "any teacher laid off pursuant to this policy shall have recall rights to any position for which he/she is certified for a period of two (2) calendar years.... Laid off teachers shall be notified by certified mail of available positions for which they are certified."

8. On January 22, 2018, the School Board met in executive session to discuss personnel that may be subject to a reduction in force. The meeting included discussion regarding the qualification, certification, competencies, performance, and seniority of certain personnel.

9. Following the discussion in executive session on January 22, the School Superintendent met with those teachers or other personnel that were discussed as possibly being subject to the reduction in force policy.

10. On February 8, 2018, at a public meeting, the School Board heard public input concerning the budget cuts, including, the possibility of workforce reduction. During the meeting, the Board went into executive session to discuss personnel.

11. On March 12, 2018, the School Board held a public meeting. At the meeting, the Board again heard public input concerning the budget cuts, including the possibility of a reduction in force.

12. An executive session for personnel purposes under SDCL 1-25-2(1) was listed on the School Board's agenda for the March 12 meeting. During this executive session, the Board discussed the qualifications, certifications, competency, performance, and seniority of district personnel that would be subject to the reduction in force policy.

13. When the Board returned from executive session a majority of the Board voted, based on the reduction in force, to take the following actions:

- not renew the contract of the District's Spanish teacher;
- not renew a .5 FTE regarding the contract of the High School counselor;

- not renew a .5 FTE regarding the contract of the Elementary School counselor; and
- not renew a .5 FTE regarding the contract of the librarian.

14. On April 4, 2018, Stachia Walker, Hot Springs, South Dakota, filed an Open Meetings complaint against the Hot Springs School Board. The Complaint alleged seven (7) violations of SDCL ch. 1-25.

15. On April 4, 2018, the Fall River County State's Attorney forwarded violations 1-4 of the complaint to the Commission pursuant to SDCL 1-25-6(3) for the Commission's review. Violations 1-4 pertained to the School Board's entry into executive session during its March 12, 2018, meeting to discuss workforce reduction. The Fall River State's Attorney retained jurisdiction over violations 5-7.

16. Violations 1-4 alleged that the School Board discussed matters in executive session on March 12 that were beyond what is allowed by SDCL 1-25-2(1). Ms. Walker believed the School Board discussed elimination of certain programs within the district and alleged that a discussion of the elimination of school district programs should occur during a public meeting of the School Board.

17. On June 2, 2018, the School Board filed its response to the complaint. The Board denied violating SDCL ch. 1-25 claiming the executive session was necessary to comply with the requirements of the Master Contract. The School Board asserted that during the executive session it discussed the qualification, certification, and seniority of teachers and other personnel.

18. At oral arguments regarding the complaint, the School Board explained that any discussion of which personnel may be subject to the reduction in force policy necessarily involved a discussion of that person's qualifications, certification, performance, and competency.

19. 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 Hot Springs School Board, as the governing body of Hot Springs School District, Hot Springs, 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. SDCL 1-25-1 states, in pertinent part:

The official meetings of the state, its political subdivisions, and any public body of the state or its political subdivisions are open to the public unless a specific law is cited by the state, the political subdivision, or the public body to close the official meeting to the public.

3. SDCL 1-25-2 states, in pertinent part:

Executive or closed meetings may be held for the sole purpose of:

(1) Discussing the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee.

4. SDCL 1-25-2 provides an exception to the open meeting requirement set forth in SDCL 1-25-1. SDCL 1-25-2(1) permits governing bodies to enter executive session to discuss the qualifications and competency of any personnel.

5. The School Board followed the guidelines established in SDCL 1-25-2(1) when entering executive session to discuss the certifications and qualifications of school district personnel that may be subject to the reduction in force policy.

6. Based upon the materials in the record, and the testimony presented at the hearing of this matter, the Commission concludes the Hot Springs School Board did not violate the South Dakota Open Meetings Laws in relation to the discussion held in executive session on March 12, 2018.

9. 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 that the Hot Springs School District 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 **Krull** (Chair), **Reedstrom**, **Rothschadl**, & **Sovell**.