

August 29, 2013

STATE OF SOUTH DAKOTA

SOUTH DAKOTA OPEN MEETING COMMISSION

IN THE MATTER OF OPEN	)	
MEETINGS COMPLAINT 13-02,	)	FINDINGS OF FACT,
LEOLA SCHOOL DISTRICT NO.	)	CONCLUSIONS OF LAW
44-2, DARCI WOLFF, ReETTA	)	AND DETERMINATION OF
SIEH, PATRICK LAPKA, and	)	NO VIOLATION
NATHAN HOFFMAN,	)	

Hearing was held on Friday, June 28, 2013 at 1:30 p.m. in the above entitled matter before the South Dakota Open Meeting Commission, John Steele, Chairman, presiding. Complainant Jerome Mack appeared in person and without counsel. Leola School District No. 44-2, ReEtta Sieh, Nathan Hoffman and Julie Nikolas, Superintendent, appearing in person and represented by Rodney Freeman, Jr., of the law firm of Churchill, Manolis, Freeman, Kludt, Shelton & Burns LLP, Huron, South Dakota.

The Open Meeting Commission, having considered the testimony and exhibits presented and all of the records and documents on file and having entered its oral decision and ruling on the parties' submissions, now enters the following:

FINDINGS OF FACT

1. The Complainant Jerome Mack filed a criminal complaint with the Fifth Judicial Circuit, County of McPherson, State of South Dakota, alleging that the school district and board members violated South Dakota Open

Meeting law by adding a non-emergency item to their agenda not previously included on the districts regularly published agenda.

2. Also, in said complaint, Mr. Mack alleged that the school district and board members discussed, while in executive session, the resignation of a board member and the establishment of parameters for replacement of said resigned board member when that is not an eligible item for discussion in executive session.

3. Two meetings were scheduled for December 10th, 2012, the first scheduled for 4:30 p.m. and the 2nd scheduled for 6:00 p.m. both of which were properly posted pursuant to state law.

4. Shortly before the first board meeting on December 10th at 4:30 p.m., a board member, Suzie Berreth submitted her letter of resignation to the board chairman. Since the Board desired to begin the process of replacing a resigning board member as soon as possible, the Agenda of the 4:30 p.m. board meeting was amended prior to adoption to include only the acceptance of the board member's resignation.

5. The amendment to the Agenda was done in public and thereafter, also in public, the Superintendent discussed the procedure that must be followed when the Board received a resignation. The discussion on the procedure to follow for a board member's resignation was conducted in open session and in motion 12-090, the Board accepted the resignation. There was no appointment or other discussion.

6. Thereafter, the Board went into executive session pursuant to SDCL 1-25-2(1) in order to conduct the Superintendent evaluation at 4:54 p.m. At 6:01 p.m., the Board came out of executive session and adjourned the meeting. There was no discussion of a replacement at this executive session; the same only concerned the Superintendent's evaluation as noted in both the Agenda and the Minutes of the Meeting.

7. The proposed Agenda is a tentative, preliminary Agenda that may be amended when the governing Board takes action to formally adopt the meeting Agenda.

8. The official Minutes of the 6:00 p.m. regularly scheduled December 10, 2012 board meeting demonstrates that during the Board Items, the Board of Education discussed the board retreat as well as the open school board member position. The Board in open session discussed the resignation and their intent to fill the same through applications that could be submitted to the Board through noon, January 2, 2013. The Board did not take any action whatsoever regarding the resigning board members position, instead, they informed the public that they could apply for the position and the Board would consider that in January, 2013.

9. As noted on the Agenda for the 6:00 p.m. December 10, 2012 meeting, there was an executive session for personnel and student discussion pursuant to SDCL 1-25-2(1). The Board entered executive session for that purpose at 6:55 p.m. and the Board came out of executive session at 9:11 p. m. and no action was taken.

10. The Board, during this executive session, conducted a board evaluation as part of the personnel discussion aspect of the executive session, but did not have a student matter to discuss since that matter was resolved administratively after the Agenda had been published.

11. During this latter executive session, there was absolutely no discussion about the board member resignation or a replacement. These matters had already been discussed publicly and applications to fill the position were open until January 2, 2013.

12. Based upon the foregoing Finding of Fact, the Board makes the following:

CONCLUSIONS OF LAW

1. The South Dakota Open Meeting Commission has jurisdiction over this matter.

2. The Commission concludes that the Leola School District and board members did not violate South Dakota Open Meeting law when adding a non-emergency item to their agenda that was not previously included in the regularly published agenda.

3. The South Dakota Open Meeting Commission concludes that the Leola School District and its board members did not violate South Dakota Open Meeting law through any improper discussion in executive session and that the executive sessions held by the board during the two meetings on December 10, 2012 were proper.

4. Based upon the foregoing Findings of Fact and Conclusions of Law, the Board enters the following:

DETERMINATION OF NO VIOLATION

Based on the foregoing Findings of Fact and Conclusions of Law, this Commission holds that the above entitled respondents did not violate the Open Meeting Law on the dates described above.

Entered by Open Meeting Commissioners Steele (Chairman), Krull, Reedstrom, Rothschadl, and Sovell.