

SOUTH DAKOTA OPEN MEETINGS COMMISSION

MINUTES OF MEETING

Matthews Training Center, Foss Building, Pierre, South Dakota

November 3, 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; Michael Smith, Clay County State's Attorney; and Lance Russell, Fall River/Oglala Lakota County State's Attorney. Beverly Katz and Melissa Neyhart, Office of the Attorney General, assisted the Commission.

Chair Sovell called the meeting to order at approximately 10:00 a.m.

A time was provided for public comment as required by SDCL 1-25-1. Attorney Gary Kaufman spoke as to agenda item 9. He requested that the Commission not recommend discontinuation of no merit case abstracts on the Attorney General's website. Mr. Kaufman noted that the last time an update was made appeared to be in 2021. He asserted that the abstracts provide guidance when it comes to open meetings laws, specifically, the public education comment section found in each abstract.

Mr. Kaufman submitted that in the past, he appeared before the Commission requesting guidance on the issue of proposed agenda as compared to a final agenda. The Commission declined to provide an advisory opinion. Ultimately, the Supreme Court addressed the issue in 2012. He further submitted that there may also be implications as it relates to unintended consequences on whether the state's attorney's filing would constitute a public record under SDCL ch. 1-27. Mr. Kaufman recognized the fact that OMC does not address 1-27 issues and indicated that if there's no access by the public through the abstracts on the OMC website, then it does raise a legitimate question about whether that information is even available to the public. He believed the abstracts provide very useful means of guidance for those who really follow the OMC decisions, as well as SDCL ch. 1-25, the Open Meetings laws.

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

Mr. Russell moved to approve the proposed agenda; Mr. A. Hoffman seconded. A voice vote was held; the agenda was approved by unanimous vote.

July 28, 2025, Minutes

Mr. A. Hoffman moved to approve the draft minutes of the July 28, 2025, meeting; Mr. Russell seconded. A voice vote was held; the minutes were approved by unanimous vote.

In the Matter of Open Meeting Complaint 2025-01, Central City Board of Trustees

The Commission considered proposed Findings of Fact and Conclusions of Law drafted in regard to this matter. Mr. A. Hoffman made a motion to approve the Findings of Fact and Conclusions of Law; Mr. Smith seconded the motion. A voice vote was held; the Findings of Fact and Conclusions of Law were unanimously approved.

In the Matter of Open Meeting Complaint 2025-02, Saddleback Road District

The Commission considered proposed Findings of Fact and Conclusions of Law drafted in regard to this matter. Mr. Smith made a motion to approve the Findings of Fact and Conclusions of Law; Ms. K. Hoffman seconded the motion. A voice vote was held; the Findings of Fact and Conclusions of Law were unanimously approved.

In the Matter of Open Meeting Complaint 2025-03, Rapid City Area School District

Mr. Russell recused himself, indicating that he had a conflict of interest. Ms. Nicole Swigart appeared as the Complainant. Mr. Michael Hickey appeared (via Teams) as counsel on behalf of the Rapid City Area School District School Board (hereafter "School Board.").

Ms. Swigart asserted that as Superintendent of the Rapid City Area Schools, she was accountable only to the School Board and they alone held exclusive authority over matters related to her employment, discipline and termination but only through public motion or vote. She indicated that she filed this complaint in November of 2024 because between June and August of 2024 the School Board made decisions in private that were not on public agendas or followed by motions or votes in violation of South Dakota open meetings laws.

Ms. Swigart covered five points that she believed showed the School Board made decisions outside the openness required of public boards in South Dakota Codified Law.

In her first point, private decision-making and unlawful suspension, Ms. Swigart submitted that the School Board took official action without properly noticing or voting in open session. Ms. Swigart indicated that on June 26, 2024, the School Board held an executive session under SDCL

1-25-2(1) and 2(3) and it ended without any public action. She noted that the School Board's next publicly noticed meeting was set for July 2nd, and on July 1st, without any public motion or vote, the School Board via the president and in-house counsel issued her a disciplinary conference review. Ms. Swigart stated that the review included a 30-day suspension and directed a pre-approved mass email be sent to all parents, staff, and media contacts stating that the School Board is requiring the superintendent to be on leave for thirty (30) days and complete cultural competency training and that it also expressed confidence in her leadership upon returning by stating we are confident in Superintendent Swigart's ability to lead this district.

Ms. Swigart asserted that the conference review and mass email showed that the School Board made disciplinary decisions privately without a public agenda item, motion, or recorded vote. She further asserted that the School District publicly shared the details and cannot now claim that it was a confidential personnel matter. Ms. Swigart indicated that the School Board's in-house counsel even confirmed that the suspension would not appear on a public agenda because the decision was intentional.

She submitted that South Dakota Codified Law 1-25-2 is clear stating any official action concerning matters pursuant to this section shall be made in an open official meeting and that it establishes the discussion may occur in executive sessions, but decision making may not. Ms. Swigart indicated that Attorney General Tellinghuisen's opinion 90-31 (1990), Exhibit A notes that public boards may consult with legal counsel in executive session under SDCL 1-25-2(3) but any official action resulting from those discussions must occur in open session. She asserted that this is the very scenario that *South Dakotans for Open Government v. South Dakota Science and Technology Authority*, OMC 2007 decision, Exhibit A warned public boards against and that in that case, the Commission narrowed the construction allowing boards to go into executive sessions noting that under SDCL 1-25-2(3) the board could not go into executive session to talk about contracts but instead the board could only get legal advice about contracts as applied here to SDCL 1-25-2(1).

Ms. Swigart further submitted that personnel discussion reasons must also be narrowly constructed since there is no mention of discipline, suspensions, or emailed information of such that the School Board could not go into executive session to discuss these issues let alone decide these issues as the words are not in the statute. She noted that seventeen days later, mid-thirty-day suspension, the School Board issued a certified letter dated July 18th stating that the letter served as written notice of the district's intention to terminate her employment, and the letter was never voted on in public. Ms. Swigart added that the letter extended her suspension by sixteen days, detailed a no clause severance and PTO payment terms and stated that on August 20, 2024, her termination would be on the School Board's agenda for approval. Ms. Swigart asserted that this phrasing showed the decision had already been

made as it said for approval not for consideration. She noted that none of these actions appeared on any public agenda, yet the School Board issued reviews, sent mass emails, mailed an intent to terminate letter, and defined the no cause termination terms and the termination date, all without lawful public action. Ms. Swigart asserted that each instance represented a significant violation of South Dakota open meetings laws.

Ms. Swigart indicated in point two, procedural errors, that the School Board convened a special meeting on August 13th even though the pretermination letter clearly said the matter would appear on the August 20th agenda. She asserted that during this meeting, the School Board committed multiple procedural violations following the approval of the agenda. Ms. Swigart further asserted the board president called for a recess right after open forum without discussion, motion, or vote even though the agenda had been approved without a recess. She pointed out that the video showed the board president saying at this time I'd like to take a five-minute recess, but it did not appear in the minutes. Ms. Swigart indicated that afterwards the School Board entered an executive session not listed on the agenda to contemplate comments just received and when a board member questioned the legality, the president replied that he had checked on it during recess. Ms. Swigart asserted that the meeting minutes on this executive session lacked details such as who made the motion, who seconded it, and the start and end times and this sequence raised concerns that during the unscheduled recess the board president sought private legal advice before returning and adding the new executive session to the agenda. Ms. Swigart indicated that after the added session the open meeting resumed but no action was taken, and the president read a prepared statement on behalf of the entire School Board. Ms. Swigart believed the statement was intended on behalf of the School Board to calm the large vocal audience referencing comments, calls, emails, and emphasizing transparency but choosing secrecy claiming that the personnel and legal matters limited what could be shared if prepared in executive session. Ms. Swigart submitted that the evidence suggests it violates the purview of South Dakota Codified Law 1-25-2(1).

Ms. Swigart added that page four of the Attorney General's brochure on conducting the public's business in public is clear. She submitted that at the time the final agenda is adopted the governing body may add or delete items and may also change the order of business, but that new items cannot be added after the agenda has been adopted by a governing board body. Ms. Swigart pointed out that if executive sessions or recesses are exceptions the brochure does not state so.

Ms. Swigart indicated in point three, pattern and practice of private decision making, that between June and August 13, 2024, the School Board met ten times, nine of which included executive sessions where they made multiple decisions privately. She pointed out that the School Board made decisions

pertaining to the mass email, two suspensions, and a termination for no cause notice with payout terms none with public motions or votes. She submitted that on August 13 the School Board did act publicly and approved by vote superintendent termination effective August 16, 2024, and immediately after the termination vote the president, without any official action, announced an acting superintendent. Ms. Swigart asserted that this again demonstrated decisions made privately reflecting a systemic misuse of executive sessions turning what should be limited discussion only settings into private decision-making meetings shielded from the public. She shared that the appointment as acting superintendent was not officially approved in any open meeting by motion or vote until November 4.

Ms. Swigart moved onto her fourth point, the lack of executive session sealed records. Ms. Swigart stated that during her first School Board executive session she was instructed to not take notes, which was a directive regularly repeated to executive session attendees. She indicated that the School Board keeps no sealed records from its executive sessions and, as a result, there is no way for the School Board to verify what was discussed or if the sessions were strictly limited to the purposes allowed by law. Ms. Swigart asserted that in its decision in *South Dakota for Open Government v. South Dakota Science and Technology Authority*, OMC 2007, the Commission held that as to the motion for entering an executive session the body must actually comply with setting forth the reason noting as to the reason the minutes are controlling except as convincingly impeached. Ms. Swigart believed that many South Dakota boards keep sealed records of executive sessions as a form of best practice; however, the Rapid City Area School District does not.

In her fifth point, violating open meeting laws through selective transparency, Ms. Swigart asserted that public boards are required to record their decisions through open meeting motions and votes. She indicated that the School Board repeatedly ignored that requirement. Ms. Swigart stated that on August 13th the motion and minutes did not disclose that the School Board had chosen to invoke the without cause termination clause of her contract. Ms. Swigart felt that the School Board was public about her suspension but secretive about everything else. Ms. Swigart pointed out that in the School Board's August through November 24 meeting minutes, her severance, and paid time off payouts were never clearly disclosed and that those payouts were buried within the general August payroll total and in claims reports and neither listed her name. Ms. Swigart asserted that true transparency is not optional, and it is the cornerstone of public trust.

Ms. Swigart requested that the School Board be held accountable to the laws that govern its actions and that this Commission find the School Board violated SDCL 1-25-1(1) and 1-25-2. She further requested that the School Board and its in-house counsel be required to complete formal training on proper open meetings procedures conducted by an external expert approved by this

Commission or the office of the Attorney General. Ms. Swigart last requested that the Commission issue clear statewide guidance on best practice regarding whether recesses and executive sessions may lawfully be added after an agenda has been approved and about maintaining accurate records of executive sessions consistent with prior Open Meetings Commission decisions to ensure that all public bodies understand the when, why, and what of lawful executive sessions. Ms. Swigart concluded with South Dakotans deserve lawful decision making by their school boards.

Chair Sovell asked if the School Board was prepared to respond. No one responded online or in-person. Chair Sovell noted that written information was submitted for consideration, and she provided Ms. Swigart with an opportunity to use her remaining time for rebuttal.

Ms. Swigart requested that the Open Meetings Commission remember she filed her complaint not for revenge, but because of the fact that between June and August the School Board made multiple decisions behind closed doors and executive sessions and those decisions were not placed on agendas and not followed by motions or votes in violation of the transparency required by South Dakota law. Ms. Swigart asserted that it isn't about convenience but rather accountability and authority because without transparency is not lawful authority. She submitted that the School Board must engage in lawful activity, and she requested the Commission find that they did not engage in lawful activity and require them to do so.

Chair Sovell moved from presentations of the parties to questions for Ms. Swigart. Chair Sovell questioned whether the School Board had an agenda item for executive session. Ms. Swigart indicated that it is not on any of their agendas. Mr. A. Hoffman reviewed the August 13, 2024, agenda that Rapid City Area School District posted online and found agenda item 9 executive session. Ms. Swigart asserted that they added a second executive session. Mr. A. Hoffman reviewed the August 13 online meeting video and found that motions were made and voted upon for each executive session.

Chair Sovell suggested that the Commission review each allegation separately. The first allegation is that the complainant believed the School Board violated the open meetings laws by having a closed meeting to discuss termination and violation of SDCL 1-26-2. Chair Sovell questioned whether the Commission believed that there had been closed meetings to discuss the termination that were done improperly or in violation of the Open Meetings Commission rules. Mr. A. Hoffman did not believe so. He felt termination was one of the reasons why there are executive sessions, and that these discussions can be held in private rather than publicly. Mr. A. Hoffman believed that it was to help employees more than anything else. Chair Sovell requested further comment as to issue one from the other Commission members. Having received no further comment, Chair Sovell moved onto allegation two.

Chair Sovell indicated that the second allegation is that the School Board violated open meetings laws specifically by having executive sessions and then not voting publicly after each session. Chair Sovell found in the School Board's response that they agreed with Swigart that the School Board does not vote in executive session and that they reach consensus. Chair Sovell pointed out that often personnel and legal matters are discussed in executive sessions to protect the privacy and integrity of legal consultation, and she did not believe those discussions to be improper. Chair Sovell indicated that there are occasions when there has not been a vote after executive session because an issue may need to be investigated. Mr. A. Hoffman agreed. Chair Sovell requested comments or concerns from the Commission members.

Chair Sovell indicated that the third allegation is the School Board's meetings between June 3, 2024, and August 13, 2024, included executive sessions and that there were no further actions after the executive sessions. She further indicated that the allegation states most districts vote publicly after executive sessions are held. Chair Sovell believed that the third allegation is a continuation of the second allegation. Chair Sovell questioned Ms. Swigart on whether Chair Sovell was interpreting the allegations correctly. Ms. Swigart agreed but indicated that there were actions taken, decided on and then taken between the nine executive meetings. The choice to send a mass email about that suspension to all families, all employees, and all media contacts was decided and done without any action.

Chair Sovell questioned Ms. Swigart if there was an actual public vote on the suspension. Ms. Swigart asserted that there was never a public vote on the suspension, the extended suspension, that was done through the intent to terminate letter. Chair Sovell thought that official action by suspension would be an interesting point for discussion because it's not a termination issue. Chair Sovell could not recall if the Commission addressed that specifically in the past. Mr. A. Hoffman questioned if there could be somewhere else it was voted on. He noted that the table provided by the Rapid City Area School District shows the first action taken after executive session on August 13, 2024, was the yes motion to termination and there was nothing stated before that regarding suspension.

Michael Hickey interjected that he is representing the Rapid City Area School District and that he intended to be present for the hearing but had the incorrect date on his calendar. Mr. Hickey indicated that he did not have the opportunity to listen to Ms. Swigart's response but requested the opportunity to respond briefly.

Chair Sovell noted that the Commission has not run into this before as the Commission went beyond the time for presentation. Chair Sovell indicated that the Commission has the written materials. She believed it would be

appropriate for the Commission to ask questions, but she didn't know that the Commission could open the door for additional oral presentations when the Commission closed that timetable. Chair Sovell asked for the Commission members' input. Mr. A. Hoffman indicated that the agenda reads consideration of pending complaints and Rapid City Area School District oral presentations. There's nothing on the agenda that says oral presentations are closed and discussion takes place. Ms. K. Hoffman believed it would be appropriate to allow Rapid City Area School District 15 minutes for oral presentation. Mr. A. Hoffman agreed. Ms. K. Hoffman felt that since the Commission gave Ms. Swigart the opportunity to argue they should provide Mr. Hickey the same opportunity. Mr. A. Hoffman agreed with Ms. K. Hoffman. Chair Sovell asked Mr. Hickey if he was prepared to do a presentation. Mr. Hickey indicated that he was prepared.

Mr. Hickey noted that the file in this case is rather voluminous and consisted of probably 720 pages in total, including the exhibits. He further noted that the complaint was filed on November 22, 2024, with the Commission, and through a series of events, it was transferred to Minnehaha County and then investigated by the Lincoln County Sheriff's Office. The investigation consisted of the sheriff's review of some board minutes, an agenda item and a conversation with Ms. Swigart that occurred on March 26, 2024, and a report was prepared. Mr. Hickey indicated that the first time that the School Board heard of this was a letter from the Attorney General's Office dated July 16, 2025, so the matter was pending for eight months, and the School Board had no idea that it was pending. Mr. Hickey pointed out that nobody ever contacted the School Board for any information or response, which is completely contrary to his previous experience in respect to these kinds of matters. He indicated that before they did an investigation the parties and board were interviewed. Mr. Hickey believed that the School Board was prejudiced because people who had knowledge were no longer on the School Board or no longer working for the district but, in any event, they filed a voluminous response. He asserted that it all stems from a complaint that was made to the Office of Civil Rights, and an investigation determined or alleged that Ms. Swigart made some disparaging remarks about Native American children and Native American attitudes towards education.

Mr. Hickey pointed out that Native American children make up about 14% of the students in their school system. He indicated that there were certain internal personnel decisions that were taken by the School Board dealing with a suspension and a conference review, which is just a document setting out the expectations of the School Board. Mr. Hickey believed that there is a copy of the conference review on the record, which included that Ms. Swigart receive executive training and perform outreach with the Native American community, among other things, and that she be placed on a paid suspension for thirty days. Mr. Hickey pointed out that those decisions were all internal and part of the personnel process. He further pointed out that the district does not

publish internal personnel decisions as they are confidential by statute. Mr. Hickey indicated that the only personnel matter attainable is employment contracts and the amount of compensation. Mr. Hickey asserted that Ms. Swigart and her attorney took the position that this information is confidential and should not be disclosed but that in the event it is disclosed they requested that we provide notice so that they could contest. Mr. Hickey believed the reason for that was to save and protect Ms. Swigart's reputation. He asserted that the School Board never went into the details of what they were suggesting in terms of disciplinary action or corrective action. Mr. Hickey believed that to be consistent with the Commission's recent decision where that's a normal function of the personnel office. He asserted that procedure was followed.

Mr. Hickey indicated that the school has a number of employees and if it's the Commission's expectation that they are required to have an open discussion or an open meeting law motion every time they do a conference review on an employee or a suspension on an employee or they engage in negotiations in terms of a severance package, that is not workable. Mr. Hickey asserted that the only formal action that they ever took was the decision to terminate, and that was an agenda item for August 13.

Mr. Hickey noted that there were a number of community members who came and spoke for and against the decision. After receiving that information, the School Board went into executive session to consider all of the evidence, they came back out and a motion was made to terminate Ms. Swigart's employment. He believed that's the only official action that was taken with respect to this matter. Mr. Hickey asserted that all other matters were internal personnel decisions that they typically do not discuss and if somebody asked a School Board member about it, they would be told it's a personnel matter.

Mr. Hickey believed what initially Ms. Swigart wanted to know was the executive session discussions. He noted that Ms. Swigart had four complaints. She complained about no minutes for executive session and the School Board not making decisions or not making motions after coming out of executive session. Mr. Hickey indicated that Ms. Swigart thought that the School Board should have to do that every single time. He asserted that it is not consistent with law requirements. Mr. Hickey pointed out that the South Dakota Associated Board of School Districts recommended executive session policy states it is the policy of board members to respect the right of privacy of district employees and students, and neither the board nor individual board members shall disclose or convey confidential information. Mr. Hickey asserted that the School Board followed this procedure and that the decision of the terms of the suspension was confidential. He pointed out that there was a public press release indicating that Ms. Swigart was going to take thirty days' paid leave and that was done at the bequest of Ms. Swigart and her attorney after negotiations with the school district. Mr. Hickey asserted that the conference review was

never discussed in public, and the School Board would never put that on the agenda because those are confidential matters. He indicated that the school has well over 1,500 employees and it would be impractical to do a public vote every time they do a conference review or a suspension if the Commission believes it needs to be done. Mr. Hickey asserted that the only official action they ever took for the public's information is the decision to terminate and that only came about because of Ms. Swigart's resistance to following the recommendations of the conference review. Mr. Hickey indicated that Ms. Swigart initially stated to the public that she didn't remember making the statements and she did apologize for the harm that it caused, but afterwards she said she didn't make the statements. He pointed out that the attorney who interviewed Ms. Swigart made a note that Ms. Swigart confirmed the statements were made and given this information the School Board decided, after struggling with this for four months, that it needed to move forward with a recommendation for termination. Mr. Hickey asserted that's why it happened the way it did, and it was the School Board's belief that things preliminary to that dealing with personnel matters were confidential. Mr. Hickey's presentation concluded.

Chair Sovell indicated that, prior to Mr. Hickey joining and giving his presentation, the Commission had some discussion on suspension versus termination versus voting on that and the fact that the suspension was not posted anywhere in the agenda. Chair Sovell appreciated Mr. Hickey's input.

Chair Sovell asked Ms. Swigart if she found or presented anything that shows that the suspension should be considered a formal action versus the type of employee information that should be protected in executive session.

Ms. Swigart asserted that the School Board gave up all confidentiality when they mass emailed and stated they were requiring her to be on leave for thirty days. She pointed out that they wanted it to be unpaid, so she requested to take her earned paid time off. Ms. Swigart confirmed she received paid time off, but it was paid by taking a forced vacation or a forced leave of thirty days. Ms. Swigart also pointed out that the School Board has sole authority over the superintendent and the superintendent has authority over all the other employees. Ms. Swigart asserted that the superintendent is not required to make an action item about suspensions in the board agendas; however, the School Board is intended to publicly share their action, and it does not have to be specific, it could be vague. Ms. Swigart noted that they announced her requirement to seek cultural competency training. She asserted that Mr. Hickey's argument is not relevant to this case. Ms. Swigart indicated that she is not saying that the School Board did not have the authority to suspend her, but they did not do it correctly. Ms. Swigart asserted that the School Board performed an action that they did not share with the public through open meeting.

Chair Sovell stated that the Commission's focus was whether there was a violation of the open meetings laws. She pointed out that in SDCL 1-25-2, the term "employee" does not include independent contractor. Chair Sovell further pointed out that subsection (2) talks about students and suspension and expulsion of students, but it doesn't say the word "suspension" or "expulsion."

Chair Sovell asked Ms. Swigart if the alleged violation is the School Board disclosed after the fact or that they did not have a public vote on her suspension. Ms. Swigart pointed out that the School Board did not have a public vote in open session but rather they made a consensus decision in the executive session, and a consensus is a vote. She further pointed out that the School Board found out somehow during the executive session that they had a majority out of seven people, and they suspended her.

Chair Sovell requested Mr. Hickey's response. Mr. Hickey asserted that the Commission held in a recent decision that a consensus is not an agreement and that it is not an official action that requires a public motion and a disclosure. He believed it was either the Meade County decision or the Pennington County one. Mr. Hickey indicated that a consensus is not an agreement or a decision to vote because the board, even though they may discuss what course of action they are going to take in executive session, never vote. He pointed out that Ms. Swigart admitted that they didn't take a vote. Mr. Hickey asserted that no matter what the School Board discusses at the time of the executive session, the formal action is when they get into open session and there is a motion made. He indicated that even if board members expressed a view in the executive session, they absolutely have the right to vote the way they feel at the time that the motion is made. Mr. Hickey admitted that he didn't know the contents of the executive sessions, but he assumed that the School Board discussed Ms. Swigart's competency and performance, and what actions they wanted to take with respect to their view of the situation, and it wasn't an agreement or vote.

Chair Sovell advised Mr. Hickey that prior to him joining the meeting, the Commission discussed each specific allegation and had paused at what is labeled number 3 in his response. Chair Sovell indicated that just prior to Mr. Hickey's presentation, the Commission was addressing whether the School Board's meetings between June 3, 2024, and August 13, 2024, included executive sessions and whether there were actions after the executive sessions or whether those were violations. Chair Sovell believed that is where the Commission paused. Ms. K. Hoffman agreed.

Chair Sovell stated that number 4 as stated on Mr. Hickey's response indicates that Ms. Swigart states minutes are not taken during executive session, which she does not agree with because she does not agree with this in her mind and Mr. Hickey did not believe that to be a violation. Chair Sovell further stated that Mr. Hickey's response was that Ms. Swigart is correct in that minutes of

executive session discussions are not made because South Dakota law does not mandate that minutes of the executive session be kept. Chair Sovell indicated that Mr. Hickey then cites some of the Attorney General's publications as their guide to open meetings laws. Chair Sovell questioned if anyone wanted to discuss that specific response any further or had questions or thoughts on minute taking during executive session.

Mr. A. Hoffman indicated that he could not find anything in the statutes that would require a board to keep minutes of executive session. Mr. Smith and Chair Sovell agreed. Chair Sovell stated that it is for consideration of privacy that is maintained within those executive sessions. Mr. Smith indicated that a lot of the times boards go into executive sessions to speak or consult with legal counsel, and he believed that would fracture the attorney-client privilege if minutes were taken. Chair Sovell agreed with Mr. Smith's comment.

Chair Sovell addressed number 5 of Mr. Hickey's response which states that Ms. Swigart argues that the School Board minutes aren't accurate as the School Board hid certain facts that she was terminated under the no cause section of her employment contract. Chair Sovell stated that Mr. Hickey argued the School Board minutes were accurate, and the School Board did not wrongfully hide facts about the termination and cites specific statutory responses thereto. Mr. A. Hoffman stated that he watched all the videos but did not review all the minutes and the minutes that he reviewed corresponded directly with what the videos showed. He indicated that he could not find any inaccuracies between the two. Mr. A. Hoffman found that some of the minutes were very detailed, probably more than what the Commission required in the past for what minutes should contain.

Mr. A. Hoffman asked Mr. Hickey what statute he is referring to, which indicates that suspension is an internal decision. Mr. Hickey stated that there is a specific exemption for personnel records found in SDCL ch. 1-27 and the only thing that is subject to disclosure is a contract and the wage information.

Chair Sovell indicated that when she works with employee groups or a public county commission on a work improvement plan or something like that is maintained as confidential. Chair Sovell stated that she cannot distinguish the suspension Ms. Swigart is describing as having needed public action versus those others. She requested additional information from Ms. Swigart regarding her position.

Ms. Swigart stated that SDCL 1-25-2 says any official action concerning matters pursuant to this section shall be made an official meeting. Ms. Swigart pointed out that Mr. Hickey referenced the word action, and she asserted that a suspension is an action. Ms. Swigart further asserted that the School Board's email stated the School Board is requiring the superintendent to be on

leave for thirty days and complete cultural competency training. Ms. Swigart indicated those were details of the conference review and confidentiality was thrown out the window when the School Board announced the details in their email. She pointed out that requiring is an action which they did not even vaguely reference in a motion.

Mr. Hickey requested to respond. He indicated that the School Board president and the School Board's attorney met with Ms. Swigart and her attorney to go over the conference review. He stated that they reviewed it in detail and explained it to Ms. Swigart. Mr. Hickey pointed out that Ms. Swigart signed off on the conference review, and she agreed that a press release could be made. He stated that the actual press release was provided to Ms. Swigart and her attorney for their review. Mr. Hickey asserted that they accepted the press release and now Ms. Swigart is complaining about it. The School Board's attorney made the modification that Ms. Swigart and her attorney requested in respect to the leave and that was done pursuant to the agreement between Ms. Swigart, her attorney, the School Board's attorney and the president of the School Board as an internal personnel matter.

Mr. A. Hoffman pointed out that as far as school boards go, hiring and firings need to be made public, so there needs to be a motion and a vote. He found that there was a vote on Ms. Swigart's termination and indicated there is a very strong argument that whether it is disciplinary or personnel matters they need to be kept confidential. Mr. A. Hoffman further found that they were in this case and anything else that happened after that is contractual and has nothing to do with the School Board. Chair Sovell agreed with Mr. A. Hoffman. She indicated that work improvement plans are specifically authorized to be maintained in an executive session without public votes.

Ms. Swigart stated that in Rapid City Area Schools signing a conference review does not indicate an agreement, but that the conference review was presented to you. Ms. Swigart pointed out that they handed Ms. Swigart and her attorney the email that they were sending out. She indicated that her attorney asked why the email needed to be sent and they indicated it was going to happen, period. Ms. Swigart stated based on that information she requested the verbiage "unpaid leave" be changed because they had agreed to let her take PTO. Ms. Swigart asserted that changing words does not indicate agreement with that announcement which then violated her confidentiality.

Mr. Hickey responded that Ms. Swigart and her attorney agreed to the email, but the parties did not agree to Ms. Swigart issuing her own public press release before the school district issued the agreed upon statement. Mr. Hickey again asserted that it's a personnel issue and the School Board thought it would be confidential. He indicated that the School Board believed that they

had agreed to issue a press release, but Ms. Swigart decided to send a press release to the media, which nobody agreed to.

Chair Sovell asked the Commission members if there are any other areas of Ms. Swigart's complaint that they need more information.

Mr. Smith generally agreed with everything that had been stated regarding work improvement plans and decisions that are made on such are maintained as confidential. Mr. Smith pointed out that in the current situation, the superintendent works under the direction of the School Board similar, for example, to a county government structure. Mr. Smith believed it was uncontested that Ms. Swigart was either the only employee or two employees who worked directly under the School Board and with every other employee there are layers of principals and administrators and decisions being made may not be appropriate to go all the way up to the board or that decisions being made somewhere along the line not directly at the board itself.

Mr. Smith stated that here we have an employee working directly under the School Board. He questioned that if a decision by a board of commissioners is being made to suspend, for example, a highway department superintendent, would that change the Commission members' thoughts and opinions as to whether that needs to be made at a public vote, compared to another employee in the structure inside of an elected official's office where there's more layers of decision making that's been granted either by the organization itself or by state law.

Chair Sovell pointed out that if the Commission would need to distinguish between them, she believed the Commission should focus on "an employee is an employee" regardless of the players. She felt that those types of employee actions are appropriate to be maintained in executive sessions.

Mr. A. Hoffman agreed. He stated that suspension would be a personnel matter. If a highway superintendent who is an employee hypothetically receives a DUI, the county would deal with that somehow, but it is still not something that has to be voted on. Mr. A. Hoffman believed that there should be a private agreement to protect confidentiality, and a lawsuit is possible if personnel information is disclosed.

Mr. Smith agreed. He indicated that he has not exhaustively reviewed Mr. Hickey's argument as to 1.7 to feel confident that it is true, but he believed that there is also truth in that a board would open itself up to lawsuits if sharing things that are intended to be confidential. Mr. Smith felt that there is a distinguishment between the superintendent of the school district versus a principal of a school district.

Chair Sovell believed that should be addressed with legislation or something different. She stated the Commission's job is to look at whether action should have been taken in open session. Chair Sovell felt that is something that could be discussed in executive session. Mr. A. Hoffman agreed.

Chair Sovell indicated that she reviewed Mr. Hickey's response numbering and Ms. Swigart's itemized submissions. She believed the Commission discussed each item. Chair Sovell asked the Commission if they needed additional information to make a decision or if they were prepared to make any type of a motion.

Mr. A. Hoffman made a motion saying there were no open meetings violations regarding 25-03 Rapid City Area School District; Ms. K. Hoffman seconded. A roll call vote was held. Mr. Smith noted a reservation as discussed but he believed after having that conversation, he also voted aye. The motion was approved by unanimous vote. Mr. Russell did not participate in the vote. Motion carried

In the Matter of Open Meeting Complaint 2025-04, Green Valley Sanitary District

Mr. Steven Myers appeared (via Teams) as the Complainant. Mr. Ty Daly appeared (via Teams) as counsel on behalf of the Green Valley Sanitary District Board of Trustees (hereafter "Board of Trustees").

Mr. Myers asserted that on April 10, 2024, the Board of Trustees President Jason Reitz, Secretary Loretta Jangula, Treasurer/Vice President Scott Mohr and newly appointed Trustee Val Lewton went into executive session without citing a South Dakota Codified Law or qualifying for executive session and they did this with the Board of Trustees' attorney Erika Olson present. Mr. Myers indicated that the approved agenda had an agenda item called "to discuss complaint by Steve Myers." He stated that SDCL 1-25-2 says executive or closed meetings may be held for the sole purpose of . . . and discussing a complaint does not fall under any of the purposes not even under number 3. Mr. Myers indicated his position is that if the attorney needs to talk to the Board of Trustees about a complaint by Steve Myers, that should be done at the attorney's office.

Mr. Myers stated that the June 26, 2025, agenda had an item for executive session with the new Board of Trustees' attorney Ty Daly. The approved agenda stated executive session per South Dakota Codified Law 1-25-2(3) consulting with legal counsel regarding litigation; however, that did not occur due to time restraints. Mr. Myers believed there was a meeting but not scheduled for an executive session. He questioned which attorney was right.

Mr. Myers indicated that he provided the Commission with the audio for that portion of the meeting which tells the truth of what happened. He pointed out

that Mr. Reitz struggled and the Board of Trustees' attorney Erika Olson had to advise Mr. Reitz that he needed a motion to go into executive session. Mr. Myers stated that at no time did she advise the motion needed to include state law or a reason for going into executive session. He pointed out that in November of last year, the Open Meetings Commission found that Bennett County was in violation of the same open meetings laws.

Mr. Myers stated that a month later issue number 2 occurred. On May 8, 2024, Mr. Mohr and Ms. Lewton stopped him from recording the public meeting. Mr. Myers asserted that SDCL 1-25-11 allows him to record a public meeting and that he, as he did at the beginning of the previous meeting, showed his recorder and let everyone know he was recording. Mr. Myers indicated that he told the person to his right that he was recording, and the recorder was in plain sight on the table in front of him, which was five feet from the treasurer and six feet from the president. Mr. Myers stated that on August 27, 2025, he emailed Mr. Daly requesting access to the recording of the May 8th meeting minutes, which he did receive. Mr. Myers indicated that he provided the Commission with the first ten minutes of the recording. He pointed out that you can hear how the meeting was argumentative and dysfunctional and who the disruptions came from other than him, including board members, especially Ms. Lewton. Mr. Myers stated that he expressed his objection to the secretary misquoting him in past meeting minutes. Mr. Myers pointed out that at approximately 7 1/2 minutes into the recording he told the board that he was recording, and Ms. Lewton asked if he received everyone's permission to record. He further pointed out that at approximately 8 minutes Mr. Mohr said all it takes is one opposed and Mr. Myers was in violation of their rights. Mr. Myers stated that at approximately 8 1/2 minutes, Mr. Mohr looked at him and asked if the board needed to adjourn the meeting. Mr. Myers stated that he stopped the recording and placed the recorder in his shirt pocket but that he continued to argue his objection to the misquote. Mr. Myers indicated that just over 9 minutes in Green Valley Sanitary District resident Julia Jagger googled the question about recording a public meeting and read the answer. He pointed out that Ms. Lewton told Ms. Jagger that Ms. Jagger was not correct. Mr. Myers indicated that he gave the Commission a recording of Commissioner Travis Lasseter asking the Board of Trustees if they stopped anybody from recording a meeting, and Mr. Mohr can be heard saying he did. Mr. Myers agreed that there were disruptions to the meeting but asserted that there would not have been as many if the Board of Trustees had not insisted that he stop recording which he had the legal right to do. Mr. Myers thanked the Commission for this time.

Chair Sovell asked if Respondent's counsel was prepared to respond. Mr. Daly indicated that he was prepared and thanked the Commissioners for allowing him to be here.

Mr. Daly introduced himself and stated he was with Lynn, Jackson, Shultz and LeBrun in Rapid City. He pointed out that the Board of Trustees's arguments are laid out in their written response. Mr. Daly indicated that as Mr. Myers noted in issue one, the agenda did address Mr. Meyers' most recent open meetings complaint. Mr. Daly noted that it is the complainant's burden to prove that there was no citation made to specific state law. He believed the record shows that the Board of Trustees did not recall whether a specific statute was cited, but he didn't believe it was definitive that they did not specifically cite a statute. Mr. Daly asserted that even if the Board of Trustees did not cite a specific statute, the evidence suggests that they did state the purpose of moving into executive session, which was to discuss the complainant's most recent open meeting complaint, and they believed that was sufficient to meet the requirements of SDCL 1-25 under the rules of statutory interpretation and the interaction between SDCL 1-25-1 and 1-25-2.

Mr. Daly asserted all that is required to enter executive session is the statement of permissible purpose and the purpose in this case, which was to discuss Mr. Meyers' open meetings complaint, squarely does fall under pending or proposed litigation with legal counsel. He noted that if only stating the purpose doesn't comply with the technical requirements of SDCL 1-25-1, it does comply with the substance of SDCL ch. 1-25 and the spirit of SDCL ch. 1-25. Mr. Daly indicated that the Attorney General's open meetings pamphlet had at one point stated that permissible purpose is the best practice. He believed that by stating the purpose for entering executive session, the Board of Trustees clearly gave the residents and the public notice of the reason they entered executive session meeting the transparency spirit that the open meetings laws try to get at.

Mr. Daly indicated that even if Mr. Myers is able to prove that there was no specific statute cited or that the Commission finds that no specific statute was cited, he believed it was clear that the permissible purpose was stated and whether viewing that through a strict textual lens, a substantial compliance approach, or a harmless error analysis, the Board of Trustees doesn't believe that violation occurred with that motion.

Mr. Daly addressed issue number 2. He asserted that it is Mr. Myers' burden of proof to show that a disruption did not occur under SDCL 1-25-11. Mr. Daly agreed that the recording shows there was disruption but didn't think the cause was clear. He believed the Board of Trustees' actions were reasonable and in good faith even if the recording wasn't what caused the disruption. Mr. Daly asserted that the Board of Trustees were attempting to prevent disruption and avoid residents or the public from being recorded without their permission, and whether that was incorrect was another matter, but their purpose was in good faith, and they were not trying to remove transparency from this meeting. He went on to say that the Board of Trustees were trying to figure out what was going on and whether they had the right to do what they

could do and whether Mr. Myers had the right to do what he was doing. Mr. Daly stated that the Board of Trustees were not trying to stifle transparency, and as evidence of this and the fact that the Board of Trustees recognized the perception that their actions created, they had since apologized and permitted Steve Meyers to record meetings with no questions asked.

Mr. Daly respectfully requested that the Commission find no violation on issue 1 or issue number 2.

Chair Sovell informed Mr. Myers that he had time remaining to respond.

Mr. Myers stated that there was no apology ever. He pointed out that the recording clearly shows Ms. Lewton was very combative, she did not want him recording and she was making up stuff along the way. Mr. Myers thanked the Commission for their time.

The Commission went into deliberations. Chair Sovell indicated that the Commission will first address whether the Board of Trustees violated SDCL 1-25-1 by making a motion to go into executive session without citing specific law to close the official meeting to the public.

Mr. Russell believed that if you read both statutes in conjunction the clear intent or the meaning of the statutes gives the impression that the Board of Trustees violated the statutes.

Chair Sovell shared that, for practical application, she works with a number of counties, municipalities and public boards, and they keep an ongoing executive session on the agenda, but they may not always cite the specific subsection under which they are going into executive session. She felt when boards enter executive session, they need to articulate the subject matter (i.e. employee, legal, etc.) of the executive session even if it's not itemized on the agenda and just a generic executive session entry. Chair Sovell believed executive session would be open to a lot of misuse otherwise. She stated that the board needs to provide a reasonable idea of why they are entering executive session and that it fits within the parameters of our legal framework.

Mr. A. Hoffman indicated that last year the Commission found Bennett County in violation for not stating the reason for going into executive session, which was a similar situation. He felt that it needs to be on the agenda as to the reason for the executive sessions and when the motion is made there needs to be a reason provided. Mr. A. Hoffman questioned if the Commission received any minutes from that meeting. He felt the Commission could not rely on testimony alone as anybody can file a complaint to the Commission with no kind of evidence to back it up and then they will ultimately be forced to find all kinds of violations.

Chair Sovell asked Mr. Daly if there were specific minutes that referenced a reason in writing for the executive session. Mr. Smith asked Mr. A. Hoffman if in the Bennett County case they did not reference any reason for going into executive session. Mr. Smith believed that they did not cite a law and reason. Mr. A. Hoffman believed that to be correct. Mr. Russell did not think they even made a motion. Mr. A. Hoffman disagreed. He thought there was a motion to go into executive session, but he would have to review the case. Mr. A. Hoffman's recollection was that the Commission held that there needs to be a stated reason in conjunction with that statute as to why you are going into executive session.

Mr. Myers indicated that he located the minutes. He stated that in the audio you can hear Mr. Reitz enter executive session. Mr. Myers further indicated the minutes read that a motion was made by Mr. Reitz and seconded by Ms. Jangula to enter executive session with no further discussion. He stated that the motion carried and the Board of Trustees along with their attorney, Ms. Olson, entered executive session at 8:50 p.m. Mr. Myers asserted that the purpose of the executive session was to discuss a complaint filed by Steve Myers and seek local advice from the Board of Trustees' attorney. He stated that a motion was then made by Mr. Mohr and seconded by Ms. Jangula to adjourn executive session with no further discussion, the motion carried and the executive session adjourned at 9:22. Mr. Myers asserted that the audio tells one story and the minutes tell another. He pointed out that in the audio you can clearly hear Mr. Reitz, the president, make the motion for executive session and in the minutes, it is a different story.

Mr. A. Hoffman asked Mr. Myers if you can hear Mr. Reitz in the recording provide a reason as to why they were entering executive session when he made the motion. Mr. Myers responded that there was no reason provided.

Mr. Smith indicated that it could be inferred it was to consult with legal counsel, which would be a proper reason to enter executive session. He pointed out that in the beginning of Mr. Myers 15 minutes he felt it would be more appropriate for them to have a conversation with their legal counsel at the attorney's office. Mr. Smith indicated there would be an issue if there was a quorum present as they would be violating open meetings laws. Mr. Myers agreed but indicated that he was not saying all three board members. Mr. Myers stated that he did discuss in his 15 minutes that at some time he believed there was a meeting about this exact meeting. Mr. Myers indicated that it was scheduled for executive session on June 26, 2025, and he found the agenda this morning, so he did not email it to everyone. Mr. Myers held up the agenda. He reiterated that the minutes and recording are contradictory because one says that they are going into executive session with the codified laws and the other one did not. Mr. Myers pointed out that the audio is clear in that all Mr. Reitz did was make a motion, a second was received and a vote and then the Board of Trustees went into executive session.

Mr. A. Hoffman pointed out that Bennett County was a little different and that he pulled up the Findings of Fact and Conclusions of Law pertaining to that case. Mr. A. Hoffman stated that the board of commissioners met on February 1, 2023, and during the meeting commissioners requested to enter executive session for contractual reasons. He indicated that there was not a second to the motion to enter executive session, and no vote taken to enter executive session in the initial minutes. Mr. A. Hoffman pointed out that in the Open Meetings Commission's Conclusions of Law the Commission concluded that implied within the authority to enter into executive session is the requirement that the public body appropriately entered executive session by entertaining the motion to enter executive session for a clearly stated authorized purpose, obtaining a second to that motion followed by a vote of the members of the body. Mr. A. Hoffman felt Bennett County was a little bit different.

Mr. Smith pointed out that SDCL 1-25-2 also states that nothing in this section or SDCL 1-25-1 prevents an executive or closed session if federal or state constitution or federal or state law permits it. He felt it would not be as simple as citing SDCL 1-25-2 and then stating one of the six enumerated reasons because there are additional reasons and rationales that would be proper to enter an executive session. Mr. Smith indicated that it is important for the public to be provided with information for transparency purposes and citing this code or citing the article or a constitution does not really provide that information but stating the rationale or the reason does. He felt there was an inference that the Board of Trustees were going into an executive session to meet with counsel, which would be proper, but he wondered if that really occurred.

Mr. Myers asked the Commission if they would like to listen to the recording. Chair Sovell said yes. Mr. Myers played the recording. Chair Sovell pointed out that she did hear the Board of Trustees reference legal. Mr. Smith indicated that it was after the motion. Chair Sovell and Mr. A. Hoffman agreed.

Mr. A. Hoffman questioned what the agenda showed. Mr. Daly stated the agenda indicated to discuss complaints made by Mr. Myers. Mr. Myers agreed.

Mr. Smith pointed out that if the requirement is to cite to the state law, then there's a violation because there was no citation as to what would have been SDCL 1-25-2(3). He believed the question was whether the Board of Trustees cited a reason. Mr. Smith felt technically it was a violation. He agreed that the Board of Trustees went back after the motion was made and all of those present voted in the affirmative, but they never went back and recreated that motion to ensure that they were citing the rationale for entering executive session even if it was stated on the agenda. Mr. Smith felt that was not an

enumerated reason under SDCL 1-25-2 to enter executive session. He believed it was never clearly stated either on the agenda or in the motion made formally.

Mr. A. Hoffman felt that if the agenda indicated the purpose was to discuss the complaint with legal counsel that would be a different story but discussing the complaint is not a reason to enter executive session.

Chair Sovell pointed out that there are a lot of complaints that do not fall into the parameters of our legal framework for executive session.

Ms. K. Hoffman believed it would be a technical violation since the language is described after the statute that requires the closure motion to include the specified purpose, and she did not think the reason was in the motion.

Chair Sovell indicated that the Commission will first address whether the Board of Trustees violated SDCL 1-25-11 when they directed Mr. Myers to quit recording the meeting. She believed there was a directive to stop recording. Chair Sovell reviewed the statutes and felt there was a need to have meetings open so folks can see what business is conducted in these meetings. She suspected the Board of Trustees probably did not understand the requirement.

Mr. A. Hoffman shared that he had discussions with his commission as well as zoning board because one of the members was concerned that privacy rights are being violated if somebody comes to the meeting that does not want to be filmed or broadcast live on Zoom. He pointed out that there is a clear right to film those meetings and if the county chooses to broadcast live public meetings there is no expectation of privacy.

Mr. Smith felt that Steve Neavill, investigator for the Pennington County State's Attorney's Office, did a fantastic job in his report outlining and interviewing those involved. Mr. Smith pointed on page 4 of the report Mr. Myers confirmed that Mr. Mohr, Ms. Lewton and her husband objected to Mr. Myers recording the May 8, 2024, meeting and that Mr. Mohr said a female attending the meeting had looked up the legality of recording a public meeting and stated it was not illegal to record the meeting. Mr. Smith indicated that Mr. Myers' statement relevant to Mr. Neavill's investigation was "and Scott said, I don't care. I will stop the meeting right now. We will be done with it. If you don't quit recording, this meeting will be done now. So, that would be disruptive but I'm not the one that caused it, the president did." Mr. Smith believed that if those facts are true the disruption does not come from the recording itself but from the body and from those that were in attendance concerned about whether it was even proper. Mr. Smith felt that considering SDCL 1-25-11 and assuming that fact as being true, it appears that such conduct would fall as a violation as well.

Mr. A. Hoffman asked Mr. Myers if he believed he was causing any kind of disturbance by recording the meeting. Mr. Myers responded absolutely not.

Mr. Myers thought the meeting room at that time consisted of eight tables in a horseshoe. The Board of Trustees sat at the first 2 tables and then everybody else sat at the other ones and he was at a table off to the side. Mr. Myers said before the meeting started, he held up his recorder and said just so everybody knows, and he told the person to his right. Mr. Myers stated that he was not disruptive, he did not stand up and he was not loud.

Mr. A. Hoffman asked Mr. Myers if he used an audio recorder or a video recorder. Mr. Myers responded with audio recorder.

Mr. Smith noted that in Mr. Neavill's interview with Mr. Mohr he asks Mr. Mohr if anyone expressed any concern about Mr. Myers recording the meeting. Mr. Mohr indicated that the meeting became very disruptive, and he felt like he should not continue the meeting without knowing whether Mr. Myers could record.

Chair Sovell believed the violation was there and understood that in sanitary sewer districts and township boards in rural communities confusion happens when they do not have legal counsel sitting at the table all the time.

Chair Sovell requested further discussion or questions and if there being none requested a motion. Mr. Smith made a motion that there was violation of issues one and two. Chair Sovell requested further discussion. There being none, Mr. A. Hoffman seconded the motion. A voice vote was held; the motion was approved by unanimous vote. Motion carried

Annual Review of Open Meetings Brochure per SDCL 1-25-13

Chair Sovell next addressed the annual review of the open meetings brochure pursuant to SDCL 1-25-13. She requested thoughts, comments or suggestions.

Mr. A. Hoffman thought the brochure looked good.

Chair Sovell requested a motion to approve the brochure's format and make it available to the public. Mr. Smith made a motion. Chair Sovell asked for any other discussion and/or a second. Mr. Russell seconded the motion. A voice vote was held; the motion was approved by unanimous vote. Motion carried.

Consideration on Action to Recommend That the Attorney General Discontinue, Cease Updating, and Remove the Abstracts of No Merit Cases Which Are Currently Posted on the Open Meetings Hyperlink on the Attorney General's Open Meetings Commission Website Under the Link "No Merits Filings Abstracts (Current 01-31-2021)"

Chair Sovell indicated that the Commission had public comment on that in the beginning of the hearing.

Ms. K. Hoffman asked what prompted the item to be placed on the agenda. Chair Sovell was not aware.

Ms. Katz indicated that she is new legal counsel for the Open Meetings Commission and has held the position for two months. Ms. Katz stated that Steven Blair was the previous legal counsel, and he indicated to Ms. Katz that the Commission may be inclined to not have the no merits cases placed on the Attorney General's website because of the substantial gap in reporting; therefore, prompting her to bring that agenda item.

Mr. A. Hoffman asked Ms. Katz what she meant by gap. Ms. Katz said the last no merits complaint published on the Attorney General's website was on January 31, 2021, and no merits complaints received from state's attorneys between the years of 2021 and 2025 have not been reported on the website.

Chair Sovell asked if the state's attorneys aren't getting the information to the Attorney General's Office for publication purposes. Ms. Katz indicated that she did not know that for a fact, but she knew that was either the case or Steve Blair neglected to report them on the website.

Ms. K. Hoffman indicated that there was a period with COVID the Commission did not hear years and thought that could be part of the reason why they were not published. She felt based on public comment the reporting would be a good resource and provide for educational purposes if it's possible. Ms. K. Hoffman would be in favor of publishing.

Mr. A. Hoffman questioned how many no merit complaints the Attorney General's Office had that were not published. Ms. Katz and Ms. Neyhart were not aware of how many between the years of 2021 and 2025.

Chair Sovell believed the Commission would need more information before proceeding. She suggested tabling the discussion until more information is available.

Mr. A. Hoffman questioned whether statute provides the Commission with authority to say whether no merits complaints should be published. Chair Sovell read the applicable statute which indicates that the Attorney

General shall use the no merit information for statistical purposes and may publish abstracts of the information. Chair Sovell felt that the topic should not be tabled, and a motion should be made that it remains “as is” with a suggestion that it go back to the Attorney General for consideration.

Mr. A. Hoffman made a motion to leave it up to the discretion of the Attorney General’s Office on whether to publish the no merit complaints. Chair Sovell requested further discussion and/or a second. Mr. Smith seconded the motion. A voice vote was held; the motion was approved by unanimous vote. Motion carried.

Election of Officers

Ms. K. Hoffman nominated Mr. Smith as Chair; Chair Sovell seconded. A voice vote was held; the motion was approved by unanimous vote. Motion carried.

Mr. Russell nominated Ms. K. Hoffman as Vice Chair; Mr. Smith seconded. A voice vote was held; the motion was approved by unanimous vote. Motion carried.

Discussion of future meetings

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

Adjournment

A motion to adjourn was made by Mr. A. Hoffman and seconded by Mr. Smith, at approximately 12:13 p.m. Roll call was made with all Commissioners voting aye, and the Commission adjourned.

Approved on this 29 day of April 2026.

SOUTH DAKOTA OPEN MEETINGS COMMISSION



Michael J. Smith, Chair