

Open Meeting Complaints “No Merits” Abstracts

Under SDCL ch. 1-25-6 State’s Attorneys are to handle complaints alleging violations of the Open Meetings Law. Once a formal Complaint is filed, the States’ Attorney must take one of the following actions: (1) undertake a criminal prosecution, (2) send the Complaint and investigatory file to the Open Meetings Commission for further action or (3) determine that there is no merit to prosecuting the case. This law became effective July 1, 2004. SDCL 1-25-6(2) requires States Attorneys to forward “no merit” open meetings filings to the Office of the Attorney General who “may publish abstracts of such information, including the name of the government body involved for purposes of public education.” The information below pertains to the “no merit” filings received by the Attorney General’s Office.

2004

No “no merits” Complaints were received during this period.

2005

1. Abstract: On May 23 2005, Turner County SA Tiffani Landeen-Hoeke filed information on a May 18, 2005 anonymous call. The allegation was that the Parker School Board conducted an unscheduled meeting on May 9, 2005 that was not advertised or publicly announced. After investigation it was concluded that the notice of the meeting and the agenda had, in fact, been undertaken properly. **Public Education Comment:** Anonymous Complaints are not required to be filed with the Office of Attorney General, but may be filed in the “no merits” file if the SA wishes.

2. Abstract: On August 8, 2005, Hughes County SA Tim Maher filed information regarding an August 2, 2005 citizen Complaint. The Complaint involved a document disseminated by a private non-profit association (undated). The citizen later advised Maher that she understood that the entity involved was not subject to the open meeting law. **Public Education Comment:** Private non-profit associations are not subject to the open meeting law.

2006

3. Abstract: On March 21, 2006, Brown County SA Mark McNeary filed a copy of a September 28, 2005 citizen Complaint concerning the Aberdeen City Council. The Complaint concerned September 19 and 26, 2005 meetings and alleged: (1) that the city council did not post its agendas and make them continuously available for 24 hours in advance of meetings and (2) that work sessions of city officers should be noticed 24

hours in advance. After investigation, the SA found that an agenda was posted on Friday for a Monday meeting, but it was not visible for public view over the weekend. He recognized that the city had agreed to also post the agenda on its website in the future thereby making it continuously available. As to work meetings held right before city council meetings, the SA noted that work sessions were not regular sessions of the city council, that notice was allowed to the extent possible, that no official votes were taken, and that the public and media were allowed to be present. **Public Education**

Comment: State's Attorneys are to exercise their prosecutorial discretion in determining whether sufficient evidence exists to pursue criminal action, refer the matter to the Open Meetings Commission, or file a "no merits" letter.

4. Abstract: On March 21, 2006, Brown County SA McNeary filed a copy of a July 22, 2005 citizen Complaint about a May 11, 2005 meeting of the Groton City Council. The Complaint alleged that the City Council met without complying with the Open Meeting Law. The SA investigated and determined that although a quorum was present, the City Council did not meet for the purpose of discussing official business. Accordingly, there was no official meeting within the meaning of the Open Meeting Law. **Public Education Comment:** The Open Meetings Commission applies only when a quorum of a public body meets to conduct official business.

5. Abstract: On March 27, 2006, Brown County SA Mark McNeary filed a copy of a June 23, 2006 citizen Complaint about the Groton Area School Board. The Complaint claimed the Board violated the open meeting law at various times between 2003 and 2005 and also violated school board policy. The SA determined that based on the facts involved, language in an agenda i.e. "Homecoming and related activities" was adequate without a more detailed or itemized agenda i.e. "school mascot, school colors and school song." He also determined that some allegations concerned school policy and Roberts Rules of Order, matters not subject to the Open Meeting Laws. Another allegation was not based on firsthand knowledge. He declined to prosecute claims that inadequate time was given for citizen comment or that the agenda was not in the proper order of discussion. In doing so, he explained that time was given for citizen input and that SDCL 1-25-1 does not provide guidelines on the extent of public participation. **Public Education Comment:** The Open Meeting Law does not address violations of board policies or Roberts Rules of Order. The Open Meeting Law does not specify amount of time available for citizen participation at public meetings.

6. Abstract: On April 4, 2006, Brown County SA McNeary filed a copy of a September 28, 2006 citizen Complaint about a September 26, 2005 Aberdeen School Board meeting. The Complaint alleges that the Board did not post an agenda for public

viewing for a continuous 24 hour period in advance of the meeting. The Board did post its agenda, but not on an outside window. It agreed to post the agenda on an outside window in the future. The SA declined to prosecute. **Public Education Comment:** Although the Open Meeting Law does not require that an agenda be placed on an outside window, it must be posted so that it is visible to the public. Further, State's Attorneys are to exercise their prosecutorial discretion in determining whether sufficient evidence exists to pursue further action.

7. **Abstract:** On April 13, 2006, the Brown County SA filed a copy of a September 2, 2005 citizen Complaint about an August 22, 2005 Aberdeen School Board meeting. Among other things, the Complaint alleged that the Board acted on an item even though it was not on its agenda 24 hours in advance. The SA declined to prosecute because the matter arose within the 24 hour period and involved a matter of urgency. As to other allegations, the SA concluded that they involved a violation of School Board policy (not the Open Meetings Laws) or were without foundation or were based on a clerical error in an agenda. **Public Education Comment:** Special meetings may be called on less than 24 hours notice if there is an urgent reason, but efforts should be undertaken to comply with the notice requirements to the extent possible.

8. **Abstract:** On October 30, 2006, Fall River County SA Lance Russell filed information involving an October 16, 2006 letter from Hot Springs City Attorney Pat Ginsbach. The allegation was that the Hot Springs City Council had sent out a letter, but that there was no indication that the City Council had ever met regarding the contents of the letter. After investigation, it was concluded that a quorum of the City Council had not met regarding the letter and the letter had, instead, been circulated for signature. **Public Education Comments:** The Open Meeting Law does not apply unless a quorum meets to discuss official business and does not apply to circulation of this letter.

2007

9. **Abstract:** On March 12, 2007, Hughes County SA Tim Maher filed a copy of a January 6, 2007 citizen letter concerning the South Dakota Legislature's Government Operations and Audit Committee. The Complaint alleges that the GOAC should not have conducted an executive session to discuss a Juvenile Corrections Monitor Report on December 4, 2006. The Legislative Research Council responded by stating that the GOAC, as a legislative committee, is not among the entities covered by SDCL ch. 1-25. The SA declined to prosecute. **Public Education Comment:** The legislature and legislative committees rely on a legislative rule, Joint Rule 7.3 for procedural requirements, including open meetings issues. The legislature does not rely on the Open Meeting Law in SDCL ch. 1-25.

10. Abstract: On September 5, 2007, Brown County SA Dorsett filed information on a May 16, 2007 citizen Complaint concerning February 14, 2005 and February 28, 2005 Groton Area School Board meetings. The Complaint alleged that during a regular meeting of the Board, it discussed and acted on matters not on the agenda and also improperly conducted an executive session. **Public Education Comment:** The SA may file a “no merits” letter if the SA reviews the matter and finds there is insufficient evidence to pursue the matter.

11. Abstract: On September 6, 2007, Brown County Deputy SA Lori Ehlers filed a copy of an October 24, 2005 citizen Complaint concerning an October 18, 2005 Brown County Commission meeting. The Complaint alleged that the agenda was not sufficiently detailed. **Public Education Comment:** The SA may file a “no merits” letter if the SA reviews the matter and finds there is insufficient evidence to pursue the matter.

12. Abstract: On September 6, 2007, Brown County SA Kimberly Dorsett filed a copy of a September 19, 2005 citizen Complaint concerning an August 15, 2005 Groton City Council meeting. The Complaint alleges that the city council gave first reading to an ordinance without having placed the item on the agenda as a first reading. **Public Education Comment:** The SA may file a “no merits” letter if the SA reviews the matter and finds that the evidence does not support a prosecution or sending a Complaint to the Open Meeting Commission.

13. Abstract: On October 9, 2007, Brown County SA Kimberly Dorsett filed a copy of an October 24, 2005 citizen Complaint concerning an October 10, 2005 meeting of the Groton Area School District. The Complaint alleges that the School Board conducted an improper executive session. **Public Education Comment:** The SA may file a “no merits” letter if the SA reviews the matter and determines that the conduct involved was not a violation of the Open Meeting Law.

2008

14. Abstract: On May 13, 2008, Union County Special Deputy SA Darrell Jesse filed information stemming from a January 3, 2008 citizen letter concerning the Union County Planning and Zoning Commission. The allegation was that on Dec. 20, 2007 the Commission met improperly by discussing official business both before and after an official meeting. **Public Education Comment:** The Open Meetings Commission applies only when a quorum of a public body meets to conduct official business. Informal discussion such as (i.e. social and sports matters) that are not issues before a public body do not constitute official business.

15. Abstract: On September 26, 2008, Brown County SA Dorsett filed a copy of a September 18, 2008 citizen Complaint September 18, 2008 against the Brown County Commission. The Complaint alleged that an improper executive session was conducted on September 16, 2008. Due to conflict, Brown County Special SA Victor Fischbach reviewed this matter and filed the investigation and his “no merits” determination on November 6, 2008. **Public Education Comment:** Executive sessions may be used to discuss legal matters with counsel.

2009

16. Abstract: On January 7, 2009, Meade County SA Jesse Sondreal filed a copy of a November 13, 2008 citizen Complaint concerning the Meade County Commission. The allegation is that after the Meade County Commission met in a properly conducted session on October 7, 2008, it also it met afterwards in a separate meeting without complying with the open meeting laws. **Public Education Comment:** Public bodies need to discuss their official business during their meetings and not wait until they have adjourned. The SA has discretion, however, to file a “no merits” letter if the SA reviews the matter and determines it does not violate this requirement or there is insufficient evidence to pursue the matter.

17. Abstract: On July 24, 2009, the Davison County SA Patrick Smith filed a copy of information he received from a citizen on July 10, 2009 concerning the Ethan City Council. Allegations were made regarding meetings on April 6, 2009 and May 7, 2009. **Public Education Comment:** Public bodies need to discuss official business during their meetings and not wait until they have adjourned. Further, when going into executive session, motions must state the statute allowing for such a session. The SA has discretion, however, to file a “no merits” letter if the SA reviews the matter and determines the public body does not violate these requirements or that there is insufficient evidence to pursue the matter.

18. Abstract: On October 7, 2009, Pennington County SA Brenner filed an investigatory report concerning a New Underwood School Board meeting held on October 3, 2009. The matter involved an employee who resigned one day, an agenda was posted the same day, and the meeting was held approximately 20 hours thereafter at a time when it was known that the members would be available so that the Board could immediately authorize a search for a new employee. No formal Complaint was filed. **Public Education Comment:** For special meetings, 24 hour notice is to be followed to the extent circumstances permit. There may be urgent reason for less notice, in which case the public body must comply to the extent it can do so. SDCL 1-25-1.1.

19. Abstract: On October 7, 2009 Pennington County SA Brenner office filed information stemming from a local media inquiry concerning the Rapid Area School District's Finance Review Committee meetings (no dates specified). The purpose of the committee is to review the current budget and to make recommendations to the Board. The committee holds no authority to take any official action. No formal Complaint was filed. **Public Education Comment:** Entities with no authority to take action or make government decisions are not required to comply with the Open Meeting Laws (unless a quorum of the governmental entity is present). See the OMC decision in *City of Watertown* (issued November 12, 2008)

2010

20. Abstract: On February 22, 2010 Meade County SA Sondreal filed a copy of a November 6, 2009 statement and investigation concerning a November 4, 2009 meeting of the Meade County Commission. The statement asserts that an agenda was not detailed enough when it listed "Highway matters" rather than more specific information. Following investigation, the complaining citizen discussed the matter with the SA and declined to pursue the matter further. **Public Education Comment:** The SA may file a "no merits" letter if the SA reviews the matter and determines it clearly does not violate the open meeting law or the SA determines there is insufficient evidence to pursue the matter or the citizen making the Complaint drops the claim.

21. Abstract: On May 17, 2010 Brule County Special Deputy SA Steven Smith filed a citizen letter concerning allegations about an April 15, 2010 gathering of the Kimball School Board. After a properly held school board meeting, some members of the Board, school administrators, and attorneys went to a restaurant in Kimball. A person at the restaurant reported the gathering on or before May 5. **Public Education Comment:** The Open Meeting Law is invoked when a quorum of a public body meets and official business is discussed. When various members of the public body happen to go to the same restaurant and choose to sit together, it may appear that they are convening an improper meeting and care should be taken so that they do not discuss official business. However, there is no violation unless official business is discussed by a quorum.

22. Abstract: On November 6, 2010 Fall River County SA Sword filed copies of August 25, 2010 Complaints lodged by media employees against the Shannon County Commission. Several allegations were made that the county commission had issued contracts without having called an official meeting to approve them. Accordingly, the Complaints asserted that secret meetings were held by a quorum of the County Commission on one or more occasions before August 24, 2010. **Public Education Comment:** The SA has discretion to review the actual evidence available and

determine whether to prosecute, file a “no merits” letter, or refer a matter to the Open Meetings Commission after considering any actual evidence available.

23. Abstract: On November 8, 2010, Moody County SA Ellingson filed information concerning a July 28, 2010 meeting of the Board of Trustees for the Town of Egan. The Town Board went into executive session with the city attorney for legal issues. According to the SA letter, a citizen Complaint alleged that a more specific reason should have been given for the executive session. The complaining party also alleged that another motion for executive session referred to an erroneous state statute and did not explain the type of matters to be discussed. **Public Education Comment:** Although providing the rationale for executive session is encouraged, the current law (effective on July 1, 2010) requires only that the specific statute be recited. In this case the applicable statute was recited.

2011

24. Abstract: On February 15, 2011, Moody County SA Ellingson filed an August 17, 2010 law enforcement report concerning four Moody County Commissioners. The four commissioners separately attended a Fire Chief’s meeting on August 13, 2010. Although this was sufficient to constitute a quorum, the Commissioners did not attend the meeting together, sit together, or talk to each other. **Public Education Comment:** When various members of a public body happen to go to the same community meeting, it might appear that they are engaging in an improper meeting and care should be taken so that they do not discuss official business. However, the Open Meeting Law is invoked only when a quorum of a public body meets *and* official business pertaining to that public body is discussed.

25. Abstract: On February 16, 2011, Moody County SA Ellingson filed a copy of an August 30, 2010 citizen Complaint against the Board of Trustees for the Town of Egan. The Complaint asserts that the Town Board met several times from March 7, 2010 to August 24, 2010 without providing a notice or agenda to the public. **Public Education Comment:** The SA has discretion on whether to prosecute or refer a matter to the Open Meetings Commission after considering whether there is sufficient evidence to proceed and also has discretion to file a “no merits” letter if there is insufficient evidence to proceed.

26. Abstract: On October 18, 2011, Pennington County SA Brenner filed a copy of an August 9, 2011 citizen Complaint against the Pennington County Board of Commissioners. The Complaint asserts that the County Commissioners met on August 2, 2011, added a new agenda item during the meeting, and voted on the matter, without

including this on an agenda or providing notice to the public. The discussion involved seeking advice from counsel regarding a breach of the peace that actually occurred during the same meeting. **Public Education Comment:** The State's Attorney determined that the Complaint had no merit because the matter sought legal advice on a disruptive event that occurred during that meeting involved and because the Commission did not engage in discussion on an otherwise public matter.

27. Abstract: On November 28, 2011, the Lake County SA filed a copy of an October 17, 2011 citizen Complaint against the Brandt Lake Sanitary District. The Complaint alleges that the Sanitary District improperly conducted an executive session. It went into executive session to consult with legal counsel and also included non-board members in the session. **Public Education Comment:** The Sanitary District found it necessary to meet with non-members so the non-members could provide information to the Sanitary District and its lawyer about upcoming matters. The State's Attorney found that the Complaint was without merit.

28. Abstract: On December 9, 2011, Clay County SA Gertsma (having been appointed by the Yankton County SA to independently review the matter), filed a copy of a September 21, 2011 citizen Complaint against the Yankton School District. The Complaint generally alleges that the School Board failed to allow this citizen to speak at a meeting, failed to provide sufficient notice of meetings, and mailed to make proper motions for going into executive session. **Public Education Comment:** The Open Meeting law does not require public bodies to allow citizens to speak at meetings without limitation and public bodies may deny citizens the opportunity to speak in order to conduct meetings in an orderly and timely manner.

2012

29. Abstract: On February 2, 2012, the Lincoln County SA filed copies of two citizen Complaints lodged on December 22, 2011 against the Lennox City Council. Both Complaints alleged that the City's December 20 meeting violated the open meeting law. The First Complaint claimed that the City Council addressed an agenda item that was not properly before it (should have been before the Board of Adjustment) and that it improperly characterized the agenda item by using the phrase "nuisance trees." The other Complaint alleged that the City Council heard testimony concerning a zoning ordinance after the public portion of the meeting had been closed. **Public Education Comment:** While agenda items can sometimes be more specific, the law does not require a high level of specificity, particularly when the item at issue has been the subject of debate at recent meetings. There is also no requirement that the agenda state that whether the item is for discussion only or whether a vote will be taken. As to the

second Complaint, the SA stated that the City Council noted during its initial discussion that a member of Southeast Council of Governments would be making comments, that the SECOG person arrived at the Council meeting after the agenda item was discussed, but before the meeting adjourned and the Council heard the SECOG information.

30. Abstract: On February 10, 2012, Minnehaha County SA McGowan filed a copy of a January 31, 2012 media Complaint against the Sioux Falls City Council. The Complaint alleges that the City Council failed to provide a sufficient notice agenda for its January 17, 2012 meeting. In particular, two items were added during the meeting that had not been on the agenda. **Public Education Comment:** SDCL 1-25-1.1 pertains to the language of “proposed agendas.” The State’s Attorney credited additional language in the proposed agenda that stated “the City Council may include other such business as may come before this body.”

31. Abstract: On March 6, 2012, Clay County SA Gertsma (having been appointed by the Yankton County SA to independently review the matter) filed a copy of a November 16, 2011 citizen Complaint against the Yankton School District. The Complaint generally alleges that the School Board failed to allow him access to meetings or school grounds to look at public record. **Public Education Comment:** The Open Meeting law does not require public bodies to allow citizens to speak at meetings without limitation and may deny citizens the opportunity to speak at meetings in order to conduct meetings in an orderly and timely manner. Further, this Complaint involved concerns about public records, an issue that does not invoke the Open Meeting Statutes.

2013

32. Abstract: On February 21, 2013, Brookings County Deputy SA Abigail Howard filed a copy of September 20, 2012 and January 16, 2013 Complaints against the Elkton City Council. The Complaints were lodged by a member of the city council. The first alleges that the City Council failed to cite to specific state law when going into executive session on September 3, 2012. The second Complaint alleges that the City Council failed to properly post notice 24 hours in advance of its December 10, 2012 meeting. The agenda was posted in a location other than that normally used for posting notices. **Public Education Comment:** SDCL 1-25-2 requires that specific statutes be cited when going into executive session. The State’s Attorney has discretion to determine whether there would be merit in pursuing action against a City Council when it properly relied on one of the statutory reasons for executive sessions, but failed to cite to the specific statute. In determining that there would be no merit to pursuing the matter, the State’s Attorney noted that the City Council now articulates the rationale for executive sessions and documents that in its minutes. A change in the location of the posted

notices is not a violation of the Open Meeting Law provided that the agenda is posted 24 hours in advance of the meeting and is readable, visible and accessible to the general public.

33. Abstract: On September 18, 2013, Aurora County SA John Steele filed a letter regarding an oral Complaint lodged with his office by a private citizen. The private citizen (Citizen A) reported that he had heard from another party (Citizen B) that the Mayor had met with another party (Citizen C) concerning a dispute where the Mayor allegedly gave his assurance to Citizen C that the City Council would act favorably toward Citizen C on an upcoming vote. After learning of the meeting with Citizen C, Citizen A alleged that an the City Council must have held a meeting that was not properly noticed to the public wherein information was provided or discussions held enabling the Mayor to provide assurances to Citizen C about future City Council votes.

Public Education Comment: It should not be inferred from secondhand communications that a violation of the open meeting law has occurred. After full examination of the facts the State's Attorney determined that the Complaint did not warrant prosecution or submission to the open meetings Commission.

34. Abstract: On December 6, 2013, Butte County SA Heather Plunkett filed a letter of Complaint from the Black Hills Pioneer regarding an October 15, 2013 executive session of the Butte County Commission. The executive session was called for personnel purposes, a proper use of an executive session. However, the Complaint alleges that the employment of a Butte County employee was terminated during the executive session and, as such, as vote was taken in executive session in violation of SDCL 1-25-2. The State's Attorney found that an executive session was held during the date in question, the employee at issue was present, and the Butte County Commission did not vote on the matter in open session. However, the Butte County Commission voted on the matter in open session at a later meeting. **Public Education Comment:** The State's Attorney is not required to proceed with further action when the facts do not warrant prosecution or submission to the open meetings Commission.

2014

35. Abstract: On January 2, 2014, Kingsbury County SA Gregg Gass filed a letter of Complaint from a Township Clerk regarding meetings of Mathews Township. Previously, a Complaint had been lodged with the OMC concerning two meetings of the Mathews Township Board. During the course of the OMC proceedings, a December 4, 2012 meeting was discussed. The OMC determined, however, that it would issue a reprimand against the Township only for the two meetings that were expressly referred by the State's Attorney in the initial Complaint. The January 2, 2014 letter concerned

the December 4, 2012 meeting that had been discussed by the parties before the OMC, but that had not been the subject of the reprimand. **Public Education Comment:** The State's Attorney has discretion to find that once a reprimand has already been issued by the OMC regarding similar allegations, there would be no value in referring an additional allegation to the OMC. Also the State's Attorney recognized that an issue was raised as to whether past decisions of the township were legally binding, but the OMC is not the forum to resolve the matter.

36. Abstract: On May 22, 2014, Beadle County States Attorney Michael Moore filed a letter of complaint from Frank Thomas regarding the City of Huron and a decision by the City to retain outside legal counsel. Jeff Banks serves as the full time City Attorney for Huron. Mr. Thomas alleged that the City should have passed a resolution describing what legal work outside counsel would be required to perform, what rate would be paid for said outside legal services, who the outside counsel would be, and authorizing that person to undertake specific litigation on behalf of the City. States Attorney Moore found that the complaint against the City did not clearly articulate a violation of SDCL ch. 1-25, and that SA Moore's investigation did not reveal any violation. **Public Education Comment:** The States Attorney has discretion to review the actual evidence available and determine whether to prosecute, file a "no merits" letter, or refer a matter to the Open Meetings Commission after considering any actual evidence available. The State's Attorney is not required to proceed with further action when the facts do not warrant prosecution or submission to the open meetings Commission.

37. Abstract: On May 22, 2014, Beadle County States Attorney Michael Moore filed a letter of complaint from Frank Thomas regarding the Huron City Library and alleging a failure of the Library Board of Trustees to post an agenda, a failure to make available for public inspection a copy of the agenda packet, a failure to timely post, publish, and print the Board's meeting minutes. States Attorney Moore found that the agenda for the Library Board meetings was properly posted. Moore also found the issue regarding the minutes was an isolated situation that had been corrected. Moore did not make a specific comment regarding agenda packet materials, however City Attorney Banks (in responding to the Complaint) stated that the board packet is available at the meetings as required by law. Banks also stated that the Board has never received a request to view the agenda packet. **Public Education Comment:** The SA has discretion on whether to prosecute or refer a matter to the Open Meetings Commission after considering whether there is sufficient evidence to proceed and also has discretion to file a "no merits" letter if there is insufficient evidence to proceed.

38. Abstract: On July 22, 2014, Minnehaha County Deputy States Attorney Kersten

Kappmeyer filed a letter of complaint from David Zokaite regarding the Multicultural Center. The complaint letter alleged the Multicultural Center was an intergovernmental agency conducted in cooperation between the City of Sioux Falls and Minnehaha County. The complaint alleged that the Center was a public body who had failed to conduct public meetings under SDCL ch. 1-25, and had failed to provide notice of said meetings. The Minnehaha County States Attorneys Office found that the Center was a non-profit South Dakota Corporation registered with the Secretary of State – not a public body. It was also determined that the Center was not vested with the exercise of sovereign powers by the State or its subdivisions. **Public Education Comment:** Only those entities that are “created or appointed by statute, ordinance or resolution [of the state, county, and/or city]” and vested with the authority to exercise sovereign power derived from state law are required to comply with the open meetings provisions of state statute.

2015

39. Abstract: On May 7, 2015, Minnehaha County Deputy States Attorney Kersten Kappmeyer filed complaint materials from Bruce Danielson regarding the Sioux Falls City Council. The complaint materials alleged the Sioux Falls City Council failed to provide timely notice of two meetings held on April 21, 2015. Mr. Danielson, in his materials, acknowledged that state law requires twenty-four hour notice of public meetings. Mr. Danielson asserted the City Council violated a local Sioux Falls Ordinance requiring the posting of a proposed agenda on the Friday before a scheduled Tuesday meeting. The Minnehaha County State’s Attorney’s Office found that SDCL ch. 1-25-6 provides state’s attorneys with authority to only review violations of SDCL ch. 1-25. The violation alleged by Mr. Danielson’s complaint was an alleged violation of Sioux Falls city ordinance and thereby beyond the statutory authority granted to the Minnehaha County State’s Attorney to review. **Public Education Comment:** States Attorneys are granted the authority, under SDCL 1-25-6, to review violations of the state open meetings law found in SDCL ch. 1-25. States Attorneys do not have the authority to review violations of local county or municipal ordinances or resolutions regarding open meetings.

40. Abstract: On July 6, 2015, Brookings County Deputy States Attorney Abigail Howard filed complaint materials from Lyle Anderson regarding the Volga Christian School School. The complaint alleged that for meetings held on May 26, May 27 and June 16, Volga Christian School Board did not post agendas, did not record votes taken at the meeting, and did not enter into executive session according to the provisions of the state open meetings statutes. The Brookings County States Attorney’s office found

that as a private Christian school, the state open meeting statutes did not apply to Volga Christian Schools. **Public Education Comment:** SDCL 1-25-1 requires the meetings of “the state, its political subdivisions, and any public body of the state or its political subdivisions” to be open to the public. For purposes of the statute, “a public body of a political subdivision means any association, authority, board, commission, committee, council, task force, school district, county, city, town, township or other agency of the state, which is created or appointed by statute ordinance or resolution and is vested with authority to exercise sovereign power derived from state law.”

41. Abstract: On July 6, 2015, Lincoln County Deputy States Attorney Michael Nadolski filed complaint materials from Debra Esche regarding the Canton City Commission. The complaint materials alleged the Canton City Commission violated SDCL 6-1-17 prohibiting a public official from voting on an issue in which a conflict of interest exists. Specifically Ms. Esche alleged that certain commissioners voted on matters in which they had a direct pecuniary interest. Ms. Eich also raised violations of SDCL 1-25-2 in that the Canton City Commission was consistently listing executive session on their agendas although they do not hold an executive session at each meeting. Further, Ms. Eich alleged the City Commission consistently makes motions and take votes on these motions in executive session. The Lincoln County States Attorney’s Office determined that the remedy regarding a vote taken in violation of a conflict of interest is invalidation of that official’s vote by seeking a judicial order. It was noted that states attorneys only have jurisdiction over violations of statutes that carry a possible criminal penalty. Regarding the alleged violations of SDCL 1-25-2, the Lincoln County States Attorney determined that no evidence existed that the Canton City Commission was taking official action in executive session regarding the matters discussed in executive session. The distinction was drawn between the act of entering and exiting executive session and official action on the matters discussed while in executive session. Finally, it was determined that the noticed agenda is merely a proposed agenda and according to the States Attorney it was acceptable to list executive session on a proposed agenda and then refrain from entering executive session during the course of the noticed meeting. **Public Education Comment:** States Attorneys are granted the authority, under SDCL 1-25-6, to review violations of the state open meetings law found in SDCL ch. 1-25. States Attorneys do not have the authority to review violations of the conflict of interest statute found SDCL ch. 6-1. Further, a public body must not take official action on the matters that were discussed in executive session while the body is still in executive session. All official action must be taken in general session. Finally, SDCL 1-25-1.1 only requires proposed agenda be noticed for an entire 24 hours in advance of a meeting. Listing executive session on a proposed agenda

and then not entering into executive session during the course of the meeting did not violate the proposed agenda notice requirement.

2016

42. Abstract: On March 31, 2016, Lincoln County Deputy States Attorney Michael Nadolski filed complaint materials from Richard Schriever regarding the Lennox Planning Commission. The Complaint alleged the Planning Commission took action on items not noticed on the agenda for their January 28, 2016, meeting. The Lincoln County States Attorney's Office found that no violation of the open meetings law occurred in that public bodies must only post notice of *proposed* agendas not finalized agendas. The Lincoln County States Attorney's Office also concluded that a public body is not precluded from taking action on an agenda item that is added when the agenda is finalized. **Public Education Comment:** It is recognized that public bodies may add items to their agendas at the time the agenda is finalized. There is nothing in state law that precludes taking action on those items at the same meeting where they are added to the agenda. However, it is recommended that unless emergency action is needed on an item, a public body put off until its next meeting action on items added to a proposed agenda at the time the agenda is finalized.

43. Abstract: On May 11, 2016, Clay County States Attorney Teddi Gertsma filed complaint materials from Michael Schaffer regarding the Turner County Board of Adjustment. The complaint alleged that on February 9, 2015, the Board of Adjustment improperly entered executive session in that none of the exceptions stated in 1-25-2 were applicable to that meeting. The complainant alleges the Board of Adjustment improperly deliberated in executive session. States Attorney Gertsma concluded there was insufficient evidence to find merit in the alleged violation. **Public Education Comment:** SDCL 1-25-2 requires that specific statutes be cited when going into executive session. It has been recognized that executive sessions may be used to discuss legal matters with counsel not limited to pending litigation. The State's Attorney has discretion to determine whether there would be merit in referring a matter to the Open Meetings Commission after considering whether there is sufficient evidence to proceed.

44. Abstract: On May 18, 2016, The Fault County States Attorney filed complaint materials from Debbie Kahl regarding the Walworth County Commission. The Walworth County States Attorney, pursuant to SDCL 1-26-6.1(4), referred the complaint to the Faulk County States Attorney. The complaint alleged that a Walworth County Commissioner improperly divulged to the media information discussed in executive session at a March 22, 2016, Commission meeting. It was generally alleged that this was a violation of SDCL ch. 1-25. The Faulk County States Attorney determined that the

Walworth County Commission properly entered executive session on March 22, and that the complaint raised by Ms. Kahl did not rise to the level of an open meetings violation. **Public Education Comment:** The States Attorney is the entity responsible for deciding whether a potential violation of the open meetings statutes has merit. Only those actions that are violative of SDCL ch. 1-25 can be prosecuted as open meetings violations or referred to the Open Meetings Commission. Divulging executive session information is not a violation of any specific provision of SDCL ch. 1-25.

45. Abstract: On July 26, 2016, Brown County States Attorney Larry Lovrein filed complaint materials from Betty Breck regarding the Groton City Council. The complaint alleged that the Council discussed rules regarding the videotaping of Council meetings by the public in executive session, but that none of the exceptions stated in 1-25-2 were applicable to that meeting. The complainant alleges the Council improperly deliberated in executive session. States Attorney Lovrein concluded there was no merit to prosecute the alleged violation or refer it to the Open Meetings Commission. **Public Education Comment:** SDCL 1-25-2 requires that specific statutes be cited when going into executive session. It has been recognized that executive sessions may be used to discuss legal matters with counsel not limited to pending litigation. The State's Attorney has discretion to determine whether there would be merit in referring a matter to the Open Meetings Commission after considering whether there is sufficient evidence to proceed.

46. Abstract: On September 29, 2016, Brown County States Attorney Larry Lovrein filed complaint materials from Betty Breck regarding the Groton City Council. The complaint alleged that the Groton City Council took official action in executive session. States Attorney Lovrein indicated that the minutes of the Council meeting do not indicate any official action was taken. Taking official action in executive session would constitute a technical violation of SDCL 1-25-2, however, States Attorney Lovrein found the violation to be de minimus and the action taken by the Council actually provided greater information to the public. States Attorney Lovrein concluded there was no merit in prosecuting the violation or referring it to the Open Meetings Commission. **Public Education Comment:** The States Attorney is the entity responsible for deciding whether a potential violation of the open meetings statutes has merit. The Open Meetings Commission only receives jurisdiction to hear an open meetings complaint when the complaint is referred by the States Attorney as having merit for review by the Commission.

47. Abstract: On December 5, 2016, Assistant Attorney General Chad Callahan filed complaint materials regarding a complaint against the Pennington County Commission made by James Biolata. Assistant Attorney General Callahan reviewed the

complaint due to Pennington County States Attorney Mark Vargo's conflict of interest. The Pennington County Commission allowed members of the public to address the Commission for five minutes on its FY 2017 budget presentation. Mr. Biolata addressed the Commission once at this, but also addressed the Commission a second time later in the same meeting on a different topic. Upon addressing the Commission the second time Mr. Biolata was asked to leave the podium. Upon being disruptive Mr. Biolata was escorted from the meeting by Pennington County Sheriff's Deputies. Assistant Attorney General Callahan concluded that no open meetings violation occurred. **Public Education Comment:** SDCL 1-25 requires the meetings of public bodies to be open to the public, but this chapter does not contain any requirements regarding the ability of the public to address those bodies. Public bodies have the discretion to provide public input time regarding agenda items that do not by operation of other state statutes require public testimony or input.

2017

There were no "no merits" filings received during this period.

2018

48. **Abstract:** On July 10, 2018, Spink County States Attorney Victor Fischbach filed complaint materials from Rex Spear regarding the Redfield City Council. The complaint alleged in essence that the Redfield City Council had ignored, disregarded, or consciously violated federal regulations concerning public input and involvement in an airport runway project at the Redfield airport. State's Attorney Fischbach found that no state open meetings violation had occurred. **Public Education Comment:** The Open Meetings Commission only has authority to interpret and enforce the state open meetings statutes found in SDCL ch. 1-25, and has no authority to enforce federal regulations regarding public involvement in federal administrative processes.

49. **Abstract:** The Hot Springs State's Attorney, Jim Sword, received an open meetings complaint containing 7 allegations made against the Hot Springs School Board. Four of those allegations were referred to the Open Meetings Commission for review and further action. The Commission entered its decision finding the School Board had committed no violation of the state open meetings statutes. In referring the 4 allegations, State's Attorney Sword indicated that he was retaining jurisdiction over allegations 5-7 for potential prosecution. On August 16, 2018, State's Attorney Sword indicated that he found no merit "to the Hot Springs community in prosecuting the matter," and submitted allegations 5-7 to the Attorney General's Office as a "no merits" filing. **Public Education Comment:** The State's Attorney may retain jurisdiction

over an open meetings allegation and may bifurcate allegations reviewed by the State's Attorney. The Open Meetings Commission only receives jurisdiction over an open meetings complaint once it has been referred to the Commission by a State's Attorney.

50. **Abstract:** On October 12, 2018, James Davies, sitting by special appointment as a Deputy States Attorney for Davison County, reviewed an open meetings complaint filed by Wanda Kobes against the Davison County Commission. Ms. Kobes alleged that the Davison County Commission met on November 29, 2017 without complying with the notification requirements of SDCL ch. 1-25. Specifically, it was alleged that a majority of the County Commission met on November 29th outside a properly notice public meeting to discuss and take final action on the continued employment of the Davison County Veterans Service Officer. Davies found that no quorum of the Commission met or engaged in said discussion. It was acknowledged that the Commission Chair discussed the issue individually via telephone with other Commission members. Davies found that no state open meetings law violation occurred. **Public Education Comment:** SDCL 1-25-1 defines an "official meeting" for purposed of the open meetings laws "a meeting of a quorum of a public body at which official business ... is discussed or decided...." Without a quorum of a public body present (in person, telephonically, or electronically) there is no official meeting that may violate the state open meetings provisions.

2019 (through February 28, 2019)

No "No Merits" filings were received during this time period.