

(Draft)

SOUTH DAKOTA OPEN MEETINGS COMMISSION

MINUTES OF MEETING

May 4, 2016

Deadwood, South Dakota

Members participating: Emily Sovell, Sully County State's Attorney (Chair); John Steele, Aurora County State's Attorney; Kevin Krull, Meade County State's Attorney; Mark Reedstrom, Grant County State's Attorney; and Lisa Rothschadl, Bon Homme County State's Attorney. Steve Blair, Office of the Attorney General, assisted the Commission.

Chairwoman Emily Sovell called the meeting to order at 2:00 p.m. Mr. Krull moved to approve the proposed agenda; Mr. Reedstrom seconded. All members voted in favor of the motion to approve the proposed agenda.

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

December 16, 2015 minutes

Mr. Steele moved to approve the draft minutes of the December 16, 2015 meeting. Ms. Rothschadl seconded. All members voted in favor of the motion to approve the minutes.

In the Matter of Open Meeting Complaint 15-03 Deadwood City Commission

Before oral presentation Chairwomen Sovell pointed out the Commission did not have a complaint that was sworn under oath as required by SDCL 1-25-6. Sovell stated that the Commission must have a complaint that is sworn under oath pursuant to SDCL 23A-2-1 before the Commission can proceed with hearing a complaint. Chairwomen Sovell expressed that lack of a sworn complaint could be a potential jurisdictional issue, or alternatively the Commission could have the complaint sworn to under oath by the complainant.

Mr. Steele stated that he believed the complainant who signed the complaint could appear before any one of the Commission, as notaries public, and verify the complaint document dated September 10, 2015.

Chairwomen Sovell asked Mr. Watson, Complainant, if he would like to request the ability to swear to the complaint under oath. Mr. Watson stated he would. No objection was noted by the City of Deadwood.

Mr. Steele made a motion to allow Mr. Watson the opportunity to swear under oath that his complaint was true and correct. Mr. Reedstrom seconded. All members voted in favor of the motion. Thereafter Mr. Watson swore under oath before Chairman Sovell that the complaint was true and correct.

Mr. Mark Watson, Black Hills Pioneer, appeared as the Complainant. City of Deadwood Attorney Quentin Riggins appeared on behalf of the Deadwood City Commission. Deadwood Mayor Chuck Turbiville also appeared in person.

Mr. Watson stated on September 8, 2015, Deadwood City Commissioner Mark Speirs addressed the Deadwood City Commission requesting the minutes of the August 17, 2015, Deadwood City Commission meeting be amended to reflect a phone vote that occurred the following day on August 18, 2015. Mr. Watson read into the record a portion of a September 8, 2015, written statement from Mr. Speirs which alleged that a phone vote was taken in violation of the open meetings laws by Mayor Turbiville that changed the previous vote of the whole commission regarding the use of the rodeo grounds concessions by the '76 Steer Roping event on August 28th, 29th, and 30th. Mr. Watson stated that based on Mr. Speirs comments the Black Hills Pioneer filed a letter dated September 10, 2015, with the Lawrence County State's Attorney alleging an open meetings law violation.

Mr. Watson continued that on February 17, 2015, there was an agenda item on the Deadwood City Commission agenda regarding the Days of '76 committee's use of the rodeo concession stand. That agenda item passed allowing the committee to use the concession stand for the event. Thereafter on August 17, 2015, that same agenda item was considered by the Deadwood City Commission. However, this time the Deadwood City Commission denied the use of the concession stand by 4 to 1 vote.

Mr. Watson stated the next morning August 18, 2015, Mayor Turbiville discussed the matter with Days of '76 Chairman Chris Roberts and Public Works Director Ron Green. Later Mayor Turbiville telephoned City Commissioners David Ruth, Jr. and Jim Van Den Eykel and asked them to vote telephonically to allow the Days of '76 committee to use the concession stands for the steer roping event. Mr. Watson alleged that at no time was the agenda for this telephonic August 18 meeting posted as required by 1-25-1, let alone the required 24 hours in advance of the meeting.

Mr. Riggins, representing the Deadwood City Commission, started his presentation by stating the Days of '76 agenda item heard on February 17, 2015, was properly noticed and was approved unanimously. Mr. Riggins stated for whatever reason that same issue made it back to the agenda for the August 17, 2015, meeting. The item was not heard as a motion to reconsider the prior vote taken on February 17, 2015. Mr. Riggins acknowledged that it

was a duplicate vote and unfortunately the Deadwood City Commission did not realize they had already voted in favor of that particular measure.

Further, according to Mr. Riggins, the City did not deny that a phone conversation between the Mayor and two other Commissioners occurred. Mr. Riggins pointed out that at the next City Commission meeting Mayor Turbiville apologized for these communications in front of the general public and acknowledged that it should not have happened.

At this point the proceedings were opened for questions from the Open Meetings Commission Members. Mr. Steele inquired if the Mayor simultaneously called the two Commissioners or if he called one then the other. Mayor Turbiville answered that the calls occurred individually.

Mr. Steele further inquired if the City treated the telephonic votes of these two Commissioners as an official action. Mr. Riggins answered that the Days of '76 was allowed to utilize the concession stands. Mr. Steele continued asking if the conversations between the Mayor and the two City Commission members were considered action of the City permitting the use of the concession stands. Mr. Riggins again stated the conversations as he understood it were more about trying to clear up the confusion that had occurred because the same issue had been voted on twice. Mr. Riggins believed until those conversations, the two City Commissioners did not realize they had already approved that particular action.

Chairwomen Sovell also inquired if the telephone votes were then treated by the City as an actual vote to rescind the action from the previous meeting. Mr. Riggins stated after the telephone conversations had occurred, in order to try and make sense of the record, an actual vote of the City Commission took place.

The Commission went into deliberations. Chairwomen Sovell indicated there was treatment of that phone conversation as a vote and it was technically a violation of the Open Meeting rules, but felt it was handled well by making confessions and apologizing. Mr. Steele indicated he was trying to focus on what exactly the violation was. Mr. Steele stated the complaint said it was holding a meeting without giving proper notice, but to him what took place was an official action being taken without holding a public meeting.

Mr. Steele moved to find Deadwood City Commission in violation of the Open Meetings Statutes for taking official action without holding a public meeting. Ms. Rothschadl seconded. Roll call was made and Mr. Steele, Mr. Reedstrom, Mr. Krull, Ms. Sovell and Ms. Rothschadl, voted aye.

In the Matter of Open Meeting Complaint 15-04 Newell School Board

Chairwoman Sovell stated that before beginning the oral presentation on the Newell School Board Complaint, the Commission again had the same issue as in the Deadwood City Commission complaint in that the file lacked a formal complaint signed under oath. Sovell asked the Commission if they wanted to give the same opportunity to this complainant as was granted in the previous file.

Mr. Steele noted there had been a change in personnel at the Butte County State's Attorney Office and felt that allowing the complaint to be sworn to before the Commission would be side stepping the authority of the current State's Attorney. Mr. Steele was also concerned about the vagueness of the complaint and whether it denied the School Board and adequate opportunity to respond to the allegations. Mr. Steele stated that he preferred that the complaint be remanded back to the Butte County State's Attorney Office. Mr. Reedstrom agreed with Mr. Steele comments.

Mr. Krull, for the record, recused himself from participating indicating he had discussed this case on a number of occasions with the Complainant, Mr. Neal Rogers.

Chairwoman Sovell and Ms. Rothschadl also agreed with the concerns raised by Mr. Steele.

Mr. Steele moved to remand the complaint back to the current Butte County State's Attorney for filing and consideration of a complaint that conforms to the requirements of State statute and for such action as the States Attorney deems appropriate. Mr. Reedstrom seconded. A roll call was made and Mr. Steele, Mr. Reedstrom, Ms. Rothschadl and Chairwomen Sovell aye. Mr. Krull abstained.

In the Matter of Open Meeting Complaint 15-02, Sully County Planning and Zoning Commission, Sully County Commission, and the Sully County Planning and Zoning Commission sitting as the Board of Adjustment.

The Commission considered proposed Findings of Fact and Conclusions of Law drafted in regards to this matter. Mr. Reedstrom made a motion to approve the Findings of Fact and Conclusions of Law as drafted which was seconded by Mr. Steele. Mr. Steele, Mr. Reedstrom, Ms. Rothschadl voted aye. Mr. Krull voted nay in light of his previous vote on this matter. Chairwomen Sovell abstained.

Preparation of the minutes.

A discussion was had regarding preparation of the minutes of the Commission's meetings and the desired length and content of the minutes. Following the discussion, it was decided that the minutes would be allowed to be shortened, but still convey enough detail to allow the Commissioners to refresh their memory regarding the proceedings when the minutes are reviewed.

No motion was required.

2016 legislation

Mr. Blair brought to the attention of the Commission that Senate Bill 90 added into law the requirement that the public be allowed to record public meetings as long as it is reasonable, obvious and not disruptive.

Mr. Blair noted Senate Bill 73 added a definition of an "official meeting" to the open meetings statutes. Senate Bill 73 also added electronic and internet communications to the definition of a teleconference.

Mr. Blair also noted that House Bill 1066 added a new section stating that the State, Departments of the State, Boards and Commissions of the State have to post proposed agendas at least two continuous days prior to their meetings. The continuous 24 hour language currently contained in statute continues to apply to other public bodies, such as county and local government bodies.

No motion was required; this was an informational item.

Future legislation

Mr. Blair informed the Commission that if they had proposals for 2017 legislation regarding the open meeting laws the Attorney General would consider bringing that legislation on the Commission's behalf. Mr. Blair advised the Commission they should have the bills prepared in October possibly early November to be considered as part of the Attorney General's bill package going forward into the next legislative session.

No motion was required; this was an informational item.

In the Matter of Open Meeting Complaint 15-01, Mitchell City Council.

Appearing telephonically were Jon Arneson representing the Mitchell Daily Republic and Carl Koch representing the City of Mitchell. Chairwoman Sovell noted that a motion to reconsider in regards to the Mitchell City Council

complaint had been filed. Chairwomen Sovell stated that she found no statutory authority to allow the Commission to hold a hearing on a motion to reconsider. Ms. Rothschadl moved to make a motion to deny the motion to reconsider. Mr. Krull seconded. Mr. Steele stated that he agreed the Commission did not have any statutory procedural rules, but did not know of any reason why the Commission could not consider the motion for reconsideration since the Commission has not yet adopted the Findings of Fact and Conclusions of Law in regards to the complaint. Regarding the motion, Mr. Steele voted nay. Mr. Reedstrom, Mr. Krull, Ms. Sovell and Ms. Rothschadl voted aye.

The Commission then moved to consider proposed Findings of Fact and Conclusions of Law drafted in regards to the City of Mitchell matter. Mr. Krull made a motion to approve the Findings of Fact and Conclusions of Law as drafted which was seconded by Mr. Reedstrom. Mr. Steele, Mr. Reedstrom, Mr. Krull, Ms. Sovell, and Ms. Rothschadl voted aye.

Adjournment.

A motion to adjourn was made by Mr. Reedstrom, seconded by Mr. Steele. All voted in favor and the Commission adjourned.

Approved on _____, 2016.

Emily Sovell, Chairwoman
On behalf of the Open Meeting Commission