

SOUTH DAKOTA OPEN MEETINGS COMMISSION

MINUTES OF TELECONFERENCE MEETING

JANUARY 5, 2018

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

Chairman Krull called the meeting to order at 10:12 a.m. Ms. Rothschadl moved to approve the proposed agenda; Mr. Reedstrom seconded. A roll call vote was held and Mr. Reedstrom, Ms. Rothschadl, Ms. Sovell, Mr. Steele, and Chairman Krull all voted aye.

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

Minutes of November 3, 2017.

Ms. Sovell moved to approve the draft minutes of the November 3, 2017 meeting. Mr. Steele seconded. A roll call vote was held and Mr. Reedstrom, Ms. Rothschadl, Ms. Sovell, Mr. Steele, and Chairman Krull all voted aye.

In the Matter of Open Meeting Complaint 17-01, South Dakota Water Management Board.

Mr. George Ferebee appeared as the Complainant. Mr. Matt Naasz and Ms. Ann Mines-Bailey appeared as legal counsel on behalf of the South Dakota Water Management Board. Mr. Gerald L. (Gerry) Kaufman Jr., appeared as legal counsel on behalf of the Associated School Boards of South Dakota (ASBSD).

Chairman Krull indicated the issue to be decided by the Commission was whether ASBSD's motion to appear as amicus curiae would be granted, and whether the Commission would consider the brief submitted by ASBSD. The Commission intends to re-hear the Water Management Board matter in full on a later date.

Chairman Krull stated that he was in favor of more information being available to assist the Commission in deciding cases rather than less. Krull noted that no specific statutory authority existed to allow consideration of amicus filings, but Krull believed implied authority existed for the Commission to consider the amicus filing. Commissioners Steele, Reedstrom, Rothschadl, and Sovell agreed with Chairman Krull's comments.

Mr. Naasz indicated that he agreed there was no specific statute authority to allow amicus filings before the Commission. On the other hand, Mr. Naasz noted there was no specific prohibition.

Mr. Ferebee stated that he felt the motion and brief filed by ASBSD were untimely in that they were not filed prior to the matter having been initially heard by the Commission. Mr. Ferebee argued that without specific statutory authority to do so the Commission could not consider the amicus filing.

Mr. Kaufman argued that the filing was timely because the matter was still pending on the merits. Kaufman further argued the Commission had reasonable implied authority to consider amicus materials. Kaufman noted that the Commission was free to give the filing the weight the Commission felt it was due upon review.

Commissioner Steele commented that he felt the motion was not untimely, and that granting the motion worked no prejudice to any party. Commissioner Steele noted that the Legislature had given minimal guidance to the Commission regarding the procedure to be used to review matters referred to it. Steele concluded the Legislature had implicitly left to the Commission to establish the procedure used to review matters that come before it.

Mr. Ferebee responded that in his opinion this matter had already been heard on the merits. Ferebee reiterated that public bodies as creatures of statute have only those powers granted to them or those reasonably implied.

Commissioner Steele moved to grant amicus status to ASBSD in the Water Management Board file. Ms. Sovell seconded the motion. Mr. Reedstrom, Ms. Rothschadl, Ms. Sovell, Mr. Steele, and Chairman Krull all voted aye. The brief filed by ASBSD would be distributed to the members of the Commission and posted electronically.

#### In the Matter of Open Meeting Complaint 17-03, Edmunds County Board of Commissioners.

The Commission took up consideration of adoption of proposed Findings of Fact and Conclusions of Law in the Edmunds County Commission matter. Neither Mr. Chris Holmes, Complainant, nor anyone representing the Edmunds County Commission appeared. Ms. Rothschadl moved to approve the proposed Findings of Fact and Conclusions of Law as drafted; Mr. Reedstrom seconded the motion. Mr. Reedstrom, Ms. Rothschadl, Ms. Sovell, Mr. Steele, and Chairman Krull all voted aye.

#### Scheduling.

The Commission scheduled the re-hearing of the Water Management Board matter for February 2, 2018. The meeting is to be held in Pierre beginning at 1:30 p.m. central time. The parties to the Water Management Board matter were given until January 29, 2018, to submit any written response to the amicus brief filed by ASBSD.

Misc.

Prior to adjournment Mr. Ferebee noted that he believed at least one Commission member was required by statute to be present at the location open to the public for the teleconference meeting. The public location for the meeting was the Attorney General's Office. No Commission members were present at that location. Chairman Krull disagreed with Mr. Ferebee's interpretation of SDCL 1-25-1.

Adjournment.

A motion to adjourn was made by Mr. Steele, seconded by Mr. Reedstrom. Mr. Reedstrom, Ms. Rothschadl, Ms. Sovell, Mr. Steele and Chairman Krull all voted aye and the Commission adjourned.

Approved on \_\_\_\_\_, 2018.

  
\_\_\_\_\_

Kevin Krull, Chair

On behalf of the Open Meeting Commission