

November 3, 2017

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN)	OMC 2017-02
MEETINGS COMPLAINT AGAINST)	
THE OLDHAM CITY COUNCIL)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW AND
)	DECISION

The above captioned matter was heard before the South Dakota Open Meetings Commission (Commission) on August 31, 2017. Complainants Marilou Scheafer, Sandra Smith, and Chandra Waikel, appeared personally and without counsel. The Groton City Council was represented by Attorney Jesse Ronning. Council members John Pester, David Holmvik, and Paul Hoy were also present. Prior to the hearing, the Commission reviewed the written submissions of the parties as well as any other exhibit, pleading or paper on file herein. Based upon the materials submitted and the arguments of the parties, the Commission enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Commission takes official notice that the City of Oldham is located in Kingsbury County, South Dakota, and categorized as a Third Class municipality.

2. The Commission further takes notice that the Oldham City Council is a duly organized public body organized pursuant to applicable provisions of state law and municipal ordinance to govern the City of Oldham.

3. Oldham is organized as a Trustee form of government. The Board of Trustees of a third class municipality consists of three and not more than five members. SDCL 9-7-1. The trustees elect one of their members to serve as president of the board. SDCL 9-7-5.

4. Testimony at the hearing of this matter indicated that at all times pertinent the City of Oldham did not have a city building, and the City Council met at the city fire hall.

5. On April 5, 2017, the Oldham City Council held a regularly scheduled meeting at the city fire hall. At this meeting the Council entered executive session and took official action to terminate the Mayor/President of the Board of Trustees, Gary Krogman, as well as the Oldham City Finance Officer, Marilou Scheafer, and the City Attorney.

6. No public notice of the meeting held on April 5, 2017, including the posting of a proposed agenda, was made by the Oldham City Council.

7. The actions to terminate the Mayor/President of the Board of Trustees, City Finance Officer, and City Attorney were taken in executive session during the April 5, 2017, meeting.

8. On April 12, 2017, a quorum of the Oldham City Council met at the home of Council member Paul Hoy. The meeting was held to discuss with

attorney Jesse Ronning the possibility of Mr. Ronning becoming the city attorney for Oldham.

9. No public notice of the April 12, 2017, meeting at Paul Hoy's house, including the posting of a proposed agenda, was made by the Oldham City Council.

10. On April 13, 2017, a quorum of the Oldham City Council met at the city fire hall with representatives of Kingbrook Rural Water.

11. No public notice of the April 13, 2017, meeting with Kingbrook Rural Water, including the posting of a proposed agenda, was made by the Oldham City Council.

12. On April 17, 2017, a quorum of the Oldham City Council met to canvas the results of the recent municipal election. The meeting was again held at the Oldham fire hall.

13. No public notice of the April 17, 2017, meeting to canvas the results of the municipal election, including the posting of a proposed agenda, was made by the Oldham City Council.

14. Chandra Waikel, Marilou Scheafer, and Sandra Smith filed open meetings complaints against the Oldham City Council on May 12, 2017, May 22, 2017, and May 24, 2017, respectively. The complaints were submitted to Kingsbury County State's Attorney Gregg Gass.

15. On May 26, 2017, State's Attorney Gass forwarded the complaints to the Commission pursuant to SDCL 1-25-6(3).

16. SDCL 1-25-1.1 states in pertinent part that “[a]ll public bodies, except the state and each state board, commission, or department as provided in § 1-25-1.3, shall provide public notice, with proposed agenda, that is visible, readable, and accessible for at least an entire, continuous twenty-four hours immediately preceding any meeting, by posting a copy of the notice, visible to the public, at the principal office of the public body holding the meeting....”

17. SDCL 1-25-2 states in pertinent part that “any official action concerning [matters discussed in executive session] shall be made at an open official meeting.”

18. Mses. Waikel, Scheafer, and Smith, alleged in bringing their complaints that the Oldham City Council violated SDCL 1-25-1.1 and 1-25-2 by holding meetings of a quorum of the Council without adequately notifying the public, and by taking official action outside of a general open session of the Council.

19. In responding to the complaint, the Oldham City Council conceded that the above facts constituted violations of the state open meetings laws.

20. Any Finding of Fact more appropriately labeled as a Conclusion of Law is hereby re-designated as such and incorporated below therein.

CONCLUSIONS OF LAW

1. The Oldham City Council, as the governing body of the City of Oldham, Kingsbury County, South Dakota, is a public body subject to the open

meeting requirements of SDCL ch. 1-25. The Open Meeting Commission has jurisdiction over this matter pursuant to SDCL ch. 1-25.

2. The Commission concludes that the plain language of SDCL 1-25-1.1 requires a public body to give public notice of its meetings by posting a proposed agenda at the public body's principle place of business that is visible and accessible for a continuous twenty-four hours prior to the meeting.

3. The Commission also concludes that the plain language of SDCL 1-25-2 requires a public body to come out of executive session and into general or open session to take official action on matters discussed or considered in executive session.

4. Based upon the materials in the record and the testimony presented at the hearing of this matter, the Commission concludes the Oldham City Council did violate the South Dakota Open Meetings Laws in that the Council held meetings on April 5, April 12, April 13, and April 17 of 2017, without providing the public notice required by SDCL 1-25-1.1.

5. The Commission further concludes that the Oldham City Council did violate the South Dakota Open Meetings Laws in that the Council took official action in executive session during the April 5, 2017, meeting without returning to general or open session in violation of SDCL 1-25-2.

6. Any Conclusion of Law more appropriately labeled as a Finding of Fact is hereby re-designated as such and incorporated above therein.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the South Dakota Open Meetings Commission hereby REPRIMANDS the Oldham City Council in that the Council held numerous meetings without giving the required public notice in violation of SDCL 1-25-1.1, and the Council took official action in executive session without first returning to general or open session in violation of SDCL 1-25-2.

Decision entered by Commissioners **Krull** (Chair), **Reedstrom**, **Rothschadl, & Steele**.

Commissioner **Sovell** was absent from the meeting when the matter was heard and abstained from any final action by the Commission.