

May 5, 2015

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN)	FINDINGS OF FACT,
MEETINGS COMPLAINT 2014-04;)	CONCLUSIONS OF LAW AND
PLANKINTON SCHOOL BOARD)	DECISION

The above captioned matter was heard before the South Dakota Open Meetings Commission (Commission) on November 21, 2014. John Paul Studeny Jr., and Gayle Van Genderen, Complainants, appeared in person and without the assistance of legal counsel. Plankinton School Board, Respondent, was represented by Chairwoman Diana Spinar, who also appeared with counsel Rodney Freeman. 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 Plankinton School District is a school district organized pursuant to the provisions of Title 13 of the South Dakota Codified Law to provide and operate a school educational program in South Dakota.

2. The Commission also takes official notice that the Plankinton School Board is the public body elected pursuant to applicable provisions of state law to govern the Plankinton School District.

3. On August 21, 2014, Mr. John Paul Studeny submitted an open meetings complaint to Aurora County States Attorney John Steele regarding the Plankinton School Board.

4. On August 26, 2014, States Attorney Steele forwarded the complaint to the Commission pursuant to SDCL 1-25-6(3).

5. On May 12, 2014, the Plankinton School Board held a regularly scheduled public meeting. No action was taken at this meeting concerning the suspension of the District's Superintendent.

6. On May 14, 2014, the School District Superintendent was suspended with pay by the Chair of the Plankinton School Board. The Superintendent was informed of this suspension in person by the Board Chair, then Vice-Chair Spinar, and another School Board member.

7. Prior to meeting in person with the Superintendent, the School Board Chair notified – via telephone – Ms. Spinar of his decision to suspend the Superintendent, and at this same approximate time also phoned three other members of the Board to notify them. Ms. Spinar was responsible for notifying the remaining two Board members.

8. The Plankinton School Board is a 7 member board.

9. Mr. Studeny and Ms. Van Genderen alleged in their complaint that sometime between May 12, 2014, and May 14, 2014 a quorum of the Plankinton School Board discussed and voted to take official action to suspend the Superintendent. This alleged meeting, if it occurred, would not have been properly noticed to the public.

10. The School Board denies that a quorum of the Board met or discussed the possible suspension of the Superintendent prior to the Board Chair's action to suspend on May 14, 2014. The School Board asserts that the Chair was solely responsible for the decision to suspend the Superintendent with pay, and the School Board members were simply individually notified of this action after the fact.

11. The School Board met on June 9, 2014, at a properly noticed and regularly scheduled board meeting, and at that time voted to not renew the Superintendent's contract which was set to expire at the end of June.

12. No affidavit of the School Board Chair was provided to the Commission detailing how he determined to suspend the Superintendent, or what conversations he may or may not have had with a quorum of the other Board members. The Board Chair also did not testify at the hearing of this matter before the Commission.

12. 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 Plankinton School Board, as the governing body of the Plankinton School District, 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 insufficient evidence exists in the record before the Commission to establish that a quorum of the Plankinton School Board met to discuss or take official action of the body outside of a properly noticed meeting.

3. Based upon the materials in the record and the testimony presented at the hearing of this matter, the Commission concludes the Plankinton School Board did not violate the South Dakota Open Meetings Laws in relation to the suspension of the School Districts Superintendent on May 14, 2014.

4. 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 determines that the Plankinton School Board did not violate the South Dakota Open Meetings Laws in regards to the facts and allegations raised by the Complaint filed in this matter.

Entered by Commissioners **Rothschadl** (acting Chair), **Krull**, **Reedstrom** & **Sovell**. Commissioner **Steele**, having referred the matter to the Commission, abstained from hearing the matter and took no part in the Commission's deliberation or decision.