

December 10, 2012

STATE OF SOUTH DAKOTA
OPEN MEETING COMMISSION

IN THE MATTER OF OPEN MEETING	)	
COMPLAINT 12-04, SOUTH DAKOTA	)	FINDINGS OF FACT,
BOARD OF MASSAGE THERAPY	)	CONCLUSIONS OF LAW, AND
	)	DECISION FINDING NO VIOLATION
	)	

INTRODUCTION AND BACKGROUND

The above matter is before the South Dakota Open Meeting Commission (OMC) upon referral from the Stanley County State's Attorney. On September 12, 2012, the State's Attorney submitted a referral letter and investigatory file to the OMC along with a Complaint that he had received from Rhanda Heller on August 22, 2012. The OMC considered the materials submitted by the State's Attorney as well as written and oral submissions to the OMC from Ms. Heller, responses from the South Dakota Board of Massage Therapy (Massage Board), and responses from the South Dakota Department of Health. Based on the information submitted, the OMC determines that the Massage Board did not violate the open meetings law.

The Complaint alleges four violations. The first allegation contends that the Massage Board violated the open meeting law by failing to provide proper notice of a meeting. The OMC concurs with the Stanley County State's Attorney that this allegation is without merit. The Massage Board provided proper notice of the meeting. The second allegation contends that the Massage Board held an improper executive session. The OMC again concurs with the Stanley County

State's Attorney that the executive session fit the authorized purposes for an executive session and was properly conducted. The third allegation of the complaint is that the Massage Board violated the open meeting laws by failing to provide access to written materials. The materials in question consist of a statistical financial report provided by the Department of Health to the Massage Board. The report was available for inspection in the meeting room while the Massage Board was considering the report. This allegation actually alleges a violation of the public records law, not the open meetings law. The OMC does not have jurisdiction to determine whether there was a violation of the open records law. The fourth allegation alleges a violation of the open meeting laws by failing to provide detailed minutes. The OMC again concurs with the Stanley County State's Attorney. The minutes of the Massage Board meeting are reasonably detailed, and there is no violation of the open meetings law.

FINDINGS OF FACT

1. The Massage Board held a meeting at the Holiday Inn Express in Fort Pierre, South Dakota on April 30, 2012.
2. A notice of the meeting was available at the Massage Board's office more than twenty-four hours prior to the start of the meeting.
3. The meeting on April 30, 2012 was originally scheduled to begin at 9:30 a.m. The meeting time was rescheduled to 9:00 a.m. A revised meeting notice for the rescheduled meeting was available at the Massage Board's office more than twenty-four prior to the start of the April 30, 2012 meeting. The

Massage Board's meeting agenda was also available at the Massage Board's office more than twenty-four hours prior to the start of the April 30, 2012 meeting.

4. No member of the local news media requested notice of any rescheduled meeting.

5. During the April 30, 2012 meeting the Massage Board conducted executive sessions. The executive sessions were conducted for the purpose of allowing the Massage Board to meet with its attorney, discuss the qualifications, competence, performance, character, and fitness of public officers, and to discuss contractual matters and possible or proposed litigation with legal counsel.

6. During the April 30, 2012 meeting the Massage Board considered a statistical financial report furnished to the Massage Board by the Department of Health.

7. The statistical financial report was provided to the Massage Board members via United States mail prior to the Massage Board meeting. It was not posted on the Massage Board's website.

8. One copy of the report was available in the meeting room for inspection while the Massage Board considered the report.

9. During the meeting the Massage Board staff called the Massage Board's attention to the report that had been furnished to the Massage Board, and asked if there were any questions. No Massage Board member had any

questions. There were no discussions or comments concerning the report. The Massage Board spent only a few seconds considering the report.

10. After the conclusion of the April 30, 2012 meeting, the Massage Board's Executive Secretary prepared and provided minutes of the meeting. The minutes of the meeting are reasonably detailed.

11. The minutes of the meeting are kept in a manner that complies with Robert's Rules of Order.

12. The Massage Board's minutes indicate in detail what was "done" by the Massage Board but not what was said by those who spoke at the Board meeting.

CONCLUSIONS OF LAW

1. The Massage Board must provide a public notice of its official meetings by making that notice available at its office at least twenty-four hours prior to the start of the meeting.

2. For rescheduled meetings the Massage Board must make the amended notice available to members of the local news media who have requested a copy of the notice.

3. For rescheduled meetings the Massage Board must also comply with public notice provisions to the extent that circumstances permit.

4. The Massage Board's notice of its meeting, rescheduled meeting, and agenda were all available at the Massage Board's office more than twenty-four hours prior to the start of the April 30, 2012 meeting.

5. The Massage Board did not provide any notice of the rescheduled meeting to any local news media because none had requested notice. The Massage Board, by making the notice of the rescheduled meeting available along with the agenda in its office more than twenty-four hours prior to the start of the April 30, 2012 meeting, complied with the public notice provisions to the extent that circumstances permit.

6. There is no violation of the open meeting law resulting from the manner in which the Massage Board provided notice of the April 30, 2012 meeting.

7. During the April 30, 2012 meeting the Massage Board conducted executive sessions. Prior to the start of these executive sessions the reasons for the executive sessions were stated publicly at the meeting.

8. The reasons, as publicly stated at the meeting, were to meet with the Massage Board's attorney to discuss complaints regarding public officers and to discuss possible or proposed litigation along with contractual matters.

9. The Massage Board's executive sessions on April 30, 2012 fall within the executive session exceptions to the requirement that meetings be open to the public.

10. The Massage Board is also entitled to meet with its attorney pursuant to the attorney-client privilege.

11. There is no violation of the open meetings law resulting from the Massage Board's executive sessions on April 30, 2012.

12. At the April 30, 2012 meeting the Massage Board had a set of documents available in the meeting room that included a statistical financial report that the Massage Board briefly considered during the meeting.

13. The statistical financial report was received by the Massage Board from the Department of Health and was not posted on the Massage Board's website.

14. It is possible that the Complainant was not aware of the availability of the report as a result of the manner in which her request was made, or the manner in which the Executive Secretary understood the request.

15. The report is a statistical financial report that is not prepared by the Massage Board but, is furnished to the Board by the Department of Health. It contains routine and mundane information. The Massage Board did not discuss any of the information or taken any action or even have any discussion or consideration of the report other than to acknowledge its receipt.

16. The allegation concerning the availability of the statistical financial report alleges a violation of the open records law. The OMC does not have jurisdiction to determine whether the open records law has been violated.

17. The minutes of the April 30, 2012 meeting are reasonably detailed.

18. The way in which Massage Board minutes are kept and provided does not constitute a violation of the requirement for detailed minutes.

19. State law does not define "detailed" minutes. However, Robert's Rules of Order does provide a definition for what is required when detailed minutes are required to be kept.

20. The Massage Board follows Robert's Rules of Order and the minutes of its April 30, 2012 meeting comply with the requirements of Robert's Rules of Order. There is no requirement that the minutes report what is said by any member of the Massage Board or anyone who speaks at a Massage Board meeting.

DECISION

1. The Massage Board did not violate the open meeting law in the manner in which it provided notice of, or conducted its meeting on April 30, 2012.

2. The Complaint of Rhanda Heller is without merit and should be dismissed.

Issued by Commissioners Brenner, Sovell, Reedstrom*, and Rothschadl. Chairman Steele, having been absent when oral presentations were made on this matter, did not participate in issuing the foregoing Findings of Fact, Conclusions of Law and Decision.

*(*Revised to correct typographical error March 26, 2013)*