

October 14, 2016

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN)	OMC 2015-03
MEETINGS COMPLAINT AGAINST)	
THE DEADWOOD CITY)	FINDINGS OF FACT,
COMMISSION – LAWRENCE)	CONCLUSIONS OF LAW AND
COUNTY)	DECISION

The above captioned matter was heard before the South Dakota Open Meetings Commission (Commission) on May 4, 2016. Complainant Mark Watson, Black Hills Pioneer, appeared personally and without counsel. The Deadwood City Commission was represented by Deadwood City Attorney Quentin Riggins. Charles “Chuck” Turbiville, Mayor of Deadwood, also appeared in person. 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 Deadwood is located in Lawrence County, South Dakota, and categorized as a Second Class municipality. The Commission also takes notice that the City of Deadwood is organized and operated under the “Commissioner” form of municipal government consisting of a Mayor and four City Commissioners.

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

3. On February 17, 2015, the Deadwood City Commission considered as an agenda item the request by the Days of '76 Committee to use the rodeo ground concession stands during the steer roping event to be held on August 28-30, 2015. The City Commission approved the request.

4. On August 17, 2015, the same request from the Days of '76 Committee again appeared on the agenda for the City Commission. The City Commission denied the request by a 4-1 vote.

5. On August 18, 2015, Mayor Turbiville called City Commissioners David Ruth and Jim Van Den Eykel and discussed the issue with them. The Mayor did not call the Commission members simultaneously, but contacted each separately and individually. These conversations resulted in the two Commissioners agreeing that the August 17th vote was duplicative of the February vote, and agreeing that the City Commission had already then approved the request for use of the concession stands.

6. At the September 8, 2015, City Commission meeting, City Commissioner Mark Spiers asked that the record of the August 17th vote be amended to include the results of the phone discussion that occurred between Mayor Turbiville and Commissioners Ruth and Van Den Eykel.

7. On September 10, 2015, Mark Watson, Black Hills Pioneer, submitted an open meetings complaint to Lawrence County State's Attorney John Fitzgerald.

8. On October 22, 2015, State's Attorney Fitzgerald forwarded the complaint to the Commission pursuant to SDCL 1-25-6(3).

9. SDCL 1-25-1 requires that the official meetings of all public bodies be open to the public. Further, SDCL 1-25-1.1 requires that notice be given of all meetings through the posting of a proposed agenda.

10. Mr. Watson alleged in bringing his complaint that the City Commission violated SDCL 1-25-1.1 by holding a meeting without giving the notice required by statute.

11. In responding to the complaint, the City Commission stated that the August 17th vote was duplicative of the February vote and was unnecessary. The City Commission stated that if any violation of the open meetings laws occurred, it happened due to the confusion over whether the Commission had previously approved action which was then brought before them for a second time.

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 Deadwood City Commission, as the governing body of City of Deadwood, Lawrence County, South Dakota, is a public body subject to the

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

2. The Commission concludes that successive conversations between the Mayor and a single Commissioner do not constitute a public meeting, and in and of themselves are not violations of the open meetings statutes if no official action of the public body is taken during these conversations.

3. The Commission concludes, based on the statements of the parties, however, that the phone conversations between Mayor Turbiville and Commissioners Ruth and Van Den Eykel were treated by the Mayor and the City Commission as official action of the City Commission.

4. The Commission concludes that SDCL 1-25-1 and 1-25-1.1 clearly contemplate that official action of a public body may only be taken at a properly noticed official meeting of the body. The open meeting statutes are intended to afford members of the public the ability to know when official action of a public body may occur.

5. Based upon the materials in the record and the testimony presented at the hearing of this matter, the Commission concludes the Deadwood City Commission did violate the South Dakota Open Meetings Laws in that the Deadwood City Commission took official action without holding a public meeting.

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 Deadwood City Commission in that the City Commission took official action without holding a public meeting in violation of SDCL 1-25-1 and 1-25-1.1.

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