STATE OF SOUTH DAKOTA

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December 28, 2020

Todd B. Woods
108 Starboard St.
Yankton, SD 57078

Deb Lillie
Deputy State's Attorney
410 Walnut Street, Suite 100
Yankton, SD 57078

Re: In the Matter of Open Meeting Complaint 2020-03, Yankton County Commission – Yankton County

Dear Mr. Woods & Ms. Lillie:

Enclosed please find proposed Findings of Fact and Conclusions of Law regarding the above referenced matter. The Commission will be holding a telephonic meeting on December 31, 2020 and will consider the findings and conclusions. A Notice of Hearing, and proposed agenda, regarding the December 31 meeting are also enclosed. As you can see from the agenda, consideration of the proposed findings and conclusions will begin at 3:00 p.m. central time or as soon thereafter as matters may be heard.

If you have any questions, please don't hesitate to contact me.

Sincerely,

Steven R. Blair
Assistant Attorney General

SRB/jm
Enclosures

STATE OF SOUTH DAKOTA

OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN MEETINGS COMPLAINT AGAINST YANKTON COUNTY COMMISSION – YANKTON COUNTY	))))	OMC 2020-03 NOTICE OF HEARING

TO: Todd B. Woods, 108 Starboard Street, Yankton, South Dakota 57078; Deb Lillie, Attorney for Yankton County Commission, 410 Walnut Street, Suite 100, Yankton, South Dakota 57078:

Please take notice that the final action to adopt the Findings of Fact, Conclusions of Law and Decision regarding the above referenced open meetings complaint will be held before the South Dakota Open Meetings Commission, telephonically, on Thursday, December 31, 2020. You are not required to be present, however, if you would like to be present the hearing will commence at 3:00 P.M. central time, and proceed in the order noted in the attached agenda. The information necessary to access the teleconference can be found in the attached agenda.

Dated this 28th day of December 2020.

Steven R. Blair
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215

SOUTH DAKOTA OPEN MEETING COMMISSION

Special Meeting
Teleconference Meeting Only

AGENDA

Teleconference dial-in number: 872-240-3412
Teleconference Access Code: 602-461-397

December 31, 2020
3:00 p.m. Central Time

1. Approval of the Agenda

2. Public Comment period as per SDCL 1-25-1

3. Approval of the Minutes of October 23, 2020 and December 18, 2020, meetings

4. Consideration of Findings of Fact and Conclusions of Law

   A. In the Matter of Open Meeting Complaint 20-01, Board of Trustees for the City of Ward

   B. In the Matter of Open Meeting Complaint 20-02, Belle Fourche City Council

   C. In the Matter of Open Meeting Complaint 20-03, Yankton County Commission

   D. In the Matter of Open Meeting Complaint 20-04, Pierre City Commission

5. Scheduling future meetings

All items are scheduled for 03:00 P.M. Central Time. Scheduled items may be delayed or moved to a later agenda item at the discretion of the OMC.

Due to public health concerns relating to Covid-19, and in accord with SDCL 1-25-1.6 and Executive Orders 2020-14, 2020-16, & 2020-30, this meeting is being held via teleconference only – no physical location will be provided for the public to listen and participate. If you wish to listen or participate in this meeting please dial 872-240-3412 and enter the access code 602-461-397 when prompted.

STATE OF SOUTH DAKOTA

OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN MEETINGS COMPLAINT AGAINST YANKTON COUNTY COMMISSION – YANKTON COUNTY	)))))	OMC 2020-03 FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECSISION

The above captioned matter was heard before a quorum of the South Dakota Open Meetings Commission (Commission) on October 23, 2020. Complainant, Todd Woods, appeared personally and without counsel. The Yankton County Commission appeared through Deputy State's Attorney Debra Lillie. 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 Yankton County is a political subdivision of the State of South Dakota created by the Legislature and duly organized and operated according to applicable provisions of South Dakota Codified Law.

2. The Commission further takes notice that the Yankton County Commission is a public body elected pursuant to applicable provisions of state law to govern Yankton County.

3. The Yankton County Commission met on October 1, 2019. The agenda originally posted for this meeting did not include agenda item 11A, which asked the County Commission to approve Resolution YC 19-8 appointing the Yankton County Mental Illness Board to also serve as the mental health board for Lincoln County. This agenda item had been noticed for the County Commission's September 18, 2019, meeting, but had been continued from that date. At the beginning of the County Commission's October 1 meeting, and before final adoption of the meeting agenda, the County Commission added agenda item 11A to the final agenda for the meeting. The County Commission subsequently took final action to approve Resolution YC 19-8 during the course of this meeting.

4. Item 12 on the agenda of the County Commission's October 1, 2019 meeting was labeled "Appoint Acting Zoning Administrator." The County Commission, in taking action on this agenda item, appointed an acting planning & zoning administrator, however, the County Commission also appointed a County Commissioner to provide guidance and assistance to the newly appointed acting administrator, and the County Commission appointed the Yankton County Planning & Zoning Board to review all zoning enforcement complaints.

5. On November 6, 2019, Todd Woods submitted an open meetings complaint to the Yankton County State's Attorney. Mr. Woods alleged that because agenda item 11A was not part of the published agenda for the County

Commission's October 1, 2019 meeting, it was a violation of the open meetings laws for the County Commission to add that agenda item at the time of the meeting. Mr. Woods further alleged that the County Commission's action in relation to agenda item 12 was improper in that the published October 1, 2019 agenda did not indicate that the County Commission would appoint a County Commissioner to assist the acting planning & zoning administrator, nor did it inform the public that the County Planning & Zoning Board would be appointed to review zoning enforcement complaints.

6. On July 10, 2020, Assistant Attorney General Caroline Srstka forwarded the complaint to the Commission pursuant to SDCL 1-25-6.1(3).

7. SDCL 1-25-1.1 requires political subdivisions (as that term is defined by SDCL 1-25-12(1)) to provide public notice of their official meetings by posting a proposed agenda at least twenty-four hours preceding the meeting.

8. In its written response to the complaint, the County Commission asserted that agenda items may be added and deleted from the proposed agenda prior to approval of the final agenda by the public body, and therefore the addition of agenda item 11A to the County Commission's October 1, 2019 agenda was appropriate. The County Commission further asserted that delegation of duties related to the appointment of an acting zoning administrator fell within the agenda item label "appoint acting zoning

administrator," and thereby final action taken by the County Commission in relation to agenda item 12 was appropriate.

9. At the hearing of this matter, in relation to agenda item 11A, Mr. Woods acknowledged that a public body has the right to add agenda items to its agenda prior to adoption of the agenda, but Mr. Woods asserted that a public body can only act on agenda items that have been noticed or published for at least twenty-four hours. Mr. Woods also asserted, in relation to agenda item 12, that any transfer of power or authority from a public body to another individual or entity should be disclosed on the published agenda.

10. 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 Yankton County Commission, as the governing body of Yankton 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. SDCL 1-25-1.1 uses "proposed agenda" to identify the nature of the agenda that must be posted or noticed at least twenty-four hours prior to the public body's meeting. The clear and unambiguous meaning of the phrase "proposed agenda" leads to the conclusion that the agenda to be noticed under SDCL 1-25-1.1 is a tentative or preliminary agenda. This agenda, then, may be amended at the time the public body acts to formally adopt the final meeting

agenda. Judge Robert Timm, Circuit Court Judge, Third Judicial Circuit, reached the same conclusion in 2012 when asked to interpret the language of SDCL 1-25-1.1. *See Molden v. Grant-Deuel School District # 25-3*, Grant Co. Civ. No. 11-0095. This decision was subsequently affirmed by the S.D. Supreme Court. *See* Order Directing Issuance of Judgment of Affirmance, *Molden v. Grant-Deuel School District # 25-3*, S.D. Sup. Ct. #26325 (October 9, 2012).

3. The Commission is unable to locate any language in SDCL ch. 1-25 that prevents a public body from taking final action on an agenda item that has not received at least twenty-four hours public notice as long as the agenda item was properly added to the agenda before final adoption of the agenda. However, public bodies are strongly encouraged to provide twenty-four hours' notice of all agenda items and are encouraged to only take action on agenda items that have not received twenty-four hours' notice when special or emergency circumstances require such action.

4. SDCL 1-25-1.1 requires a political subdivision to post its proposed agenda at least twenty-four hours prior to the meeting. The plain language of the statute authorizes a public body to amend its proposed agenda at the time it adopts the final agenda for a meeting. The Yankton County Commission did not err when it amended its proposed agenda for its October 1, 2019 meeting to add agenda item 11A and subsequently take action on the agenda item.

5. "[T]he function of an agenda is to inform the members of the public in some detail as to the matters to be discussed at the meeting of [a] public body. … The agenda may be limited to a bare identification or itemization of matters to be discussed[.]" Ann Taylor Schwing, *Open Meetings Laws 3d*, § 5.40 (2011).

6. The Commission is unable to locate any provision of SDCL ch. 1-25 that defines the level of specificity that must be used by a public body to identify agenda items on a proposed agenda. The Commission concludes that a proposed agenda must include a bare identification of the matters to be discussed by the public body. It would be unreasonable, with no further statutory guidance, to require public bodies to list on their agendas every conceivable action that may be taken on a certain subject. The Commission concludes the Yankton County Commission did not violate any open meetings provision regarding the actions the County Commission took at its October 1, 2019 meeting in relation to agenda item 12 and the appointment of an acting zoning administrator.

7. Based upon the materials in the record and the testimony presented at the hearing of this matter, the Commission concludes the Yankton County Commission did not violate the South Dakota Open Meetings Laws.

8. 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 the Yankton County Commission did not violate the South Dakota Open Meetings Laws in regard to the facts and allegations raised by the complaint filed in this matter.

Decision entered by Commissioners **Reedstrom (Chair), Hoffman, Tracy, & Wendt**.

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

STATE OF SOUTH DAKOTA

OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN MEETINGS COMPLAINT AGAINST YANKTON COUNTY COMMISSION – YANKTON COUNTY	))))	OMC 2020-03 CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the proposed Findings of Fact, Conclusions of Law, & Decision and Notice of Hearing issued in the above-captioned matter, were served by Federal Express Overnight Delivery upon:

Todd B. Woods
108 Starboard Street
Yankton, South Dakota 57078

&

Deb Lillie
Deputy State's Attorney
410 Walnut Street, Suite 100
Yankton, South Dakota 57078

Dated this 28th day of December 2020.

Steven R. Blair
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215