

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SOUTH DAKOTA

OPEN MEETINGS COMMISSION

=====

IN THE MATTER OF OPEN MEETING
COMPLAINT 2024-07 PENNINGTON
COUNTY BOARD OF COMMISSIONERS

=====

MONDAY, NOVEMBER 25, 2024
MATTHEWS TRAINING CENTER
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA 57501

COMMISSION MEMBERS PRESENT:

EMILY SOVELL, CHAIR
KATELYNN HOFFMAN
LANCE RUSSELL (by Teams)
MICHAEL SMITH
AUSTIN HOFFMAN

APPEARANCES:

As Counsel to the Commission: STEVEN R. BLAIR
Attorney General's Office
PO Box 70
Rapid City, SD 57702

1 MONDAY, NOVEMBER 25, 2024

2 CHAIRWOMAN SOVELL: Agenda item number B is 2024-7,
3 Pennington County Board of Commissioners. I'll give everyone
4 on the Commission and with us here a moment to regroup with
5 your files. In this we have the file that was provided by the
6 Attorney General's Office to the Commissioners, including the
7 initial complaint, two July 31 acknowledgements, an August 22
8 letter from the Pennington County Commissioners, August 26
9 letter from Pennington County Commissioners, October 21 letter
10 to the parties, notice of hearing, and then our agenda and
11 certificates of service. Does everybody have your files up
12 with that information?

13 MR. SMITH: Yes.

14 MR. HOFFMAN: Yes.

15 CHAIRWOMAN SOVELL: With that, we will go ahead and
16 proceed with Complaint 2024-7, Pennington County Board of
17 Commissioners. The complainants are Travis Lasseter and Deb
18 Hadcock, am I pronouncing those correctly? So you will be
19 provided a 15-minute time to present, and you can certainly
20 reserve a portion or divide among you. And we will let Mr.
21 Blair keep track of us and let you know when we are getting
22 close.

23 MR. LASSETER: Ready, Mr. Blair? Commissioners, thank
24 you for this morning. I'm Travis Lasseter, Pennington County
25 Commissioner, District 4. I'm not going to need 15 minutes.

1 I'm going to say, after reviewing my complaint and reviewing
2 the materials and facts and seeing the conclusions out of that,
3 I'm going to concur we still maintain that the complaint that
4 we filed, we maintain that the facts and the evidence that we
5 have presented are solid.

6 And whenever you look at it, part of this complaint
7 deals with stuff that has gone on for many different meetings,
8 and we have asked for training and I think that's the biggest
9 thing, we want training. We want some policies in place to
10 make sure that this does not happen again so that we can make
11 sure what's supposed to be public is in the public, what's
12 supposed to be in executive session is in executive session.

13 And what we have asked for, and even our last meeting,
14 we have agreed there is stuff that shouldn't be in executive
15 session, but because of the way the policies are written, it
16 goes into executive session; so we just want it clarified. We
17 are not trying to be mean or anything of that nature. We want
18 to make sure that everything that's in the public should be in
19 the public and everything that's to be private is private. So
20 I think the evidence stands that what we allege is wrong and
21 has violated the open meetings laws. Thank you.

22 CHAIRWOMAN SOVELL: You have 13 minutes left, if you
23 have rebuttal. With that, then I'll have you introduce
24 yourself. You are still with the complainants?

25 MS. HADCOCK: Yes. Deb Hadcock.

1 CHAIRWOMAN SOVELL: Go ahead and proceed with the
2 portion of that 13 minutes.

3 MS. HADCOCK: My name is Pennington County
4 Commissioner Deb Hadcock. On the complaint on 24-07 on
5 Pennington County, this official complaint against our board
6 was not the first course of action Commissioner Lasseter and I
7 pursued to move our board toward open government. We continued
8 to express our concerns to fellow board members about what we
9 believe were continuous and ongoing violations of open meeting
10 laws. Over time, that pattern of ongoing violations of open
11 meeting laws -- over time, the pattern of doing business a
12 certain way becomes accepted as the norm.

13 We would question this executive session process, as
14 we felt it was being utilized to stifle public input. Still
15 our concerns were consistently dismissed by the rest of the
16 board and our representative from the State's Attorneys Office.
17 As a result, we felt compelled to file this formal process to
18 find resolution and restore public trust in open government.
19 We owe this to our citizens of our county.

20 The packet for the information contained in the
21 memorandum dated June 6, 2023, which indicates I authored it, I
22 did not. I did not author, I did not write or I did not sign
23 the memorandum on June 6, 2023. I am also going to refer to
24 the document in the packet titled executive session procedures
25 as of October 2023, personnel items, number one, in executive

1 session is used to discuss a specific employee or employees
2 and/or their challenges. It is not used to discuss a position
3 or the group compensation policy acceptance. During the
4 November 7, 2023 executive session meeting, we were presented
5 with a market analysis on wages that did not discuss the
6 employee's qualifications. That was on Assistant Highway
7 Superintendent Joe Miller.

8 Then in 2024, if you look at your packet, it was
9 changed. The same executive guidelines document was updated
10 for January 2024, personnel items, number one, in executive
11 session under personnel is used to discuss a specific employee/
12 employees and their qualifications, competence, performance,
13 character or fitness. This includes compensation requests for
14 specific individuals. It is not to be used to discuss a job
15 position or the group compensation requests. I believe it was
16 amended because we were previously in noncompliance with open
17 meeting laws.

18 And I concur with the investigation from the Lincoln
19 chief civil deputy group, with his conclusions on that this
20 warranted an open meeting violation.

21 CHAIRWOMAN SOVELL: Thank you. We have how much time
22 remaining?

23 MR. BLAIR: 10 minutes.

24 CHAIRWOMAN SOVELL: So with that, we are going to go
25 into the respondents for the commission. Do we have a

1 representative here speaking on behalf of the commission?

2 MR. LACROIX: Thank you, Madam Chairman. My name is
3 Lloyd LaCroix, chairman of the Pennington County Commission.
4 At this time what I'm going to do is we do have Commissioner
5 Gary Drewes here, Vice-Chairman Ron Rossknecht here, we do also
6 have commission manager Holli Hennies here to answer any
7 questions you may have, also our HR director here also, if you
8 have any questions for them.

9 The comments that we do have I'm going to ask Mr.
10 Drewes to read because my voice kind of comes and goes, and so
11 I asked him to read the comments, and he supplied you our
12 statements and our supporting documents before the meeting for
13 that. But after those two speak, I would ask that Gary Drewes,
14 Ron Rossknecht speak, I would like to have a closing comment
15 before I turn it over.

16 CHAIRWOMAN SOVELL: That's fine, we will collective
17 use your time as you have designated, and we would ask that the
18 next speaker then come forward and go ahead.

19 MR. DREWES: Thank you, Commissioner LaCroix. My name
20 is Gary Drewes. I am completing my second year, second four
21 year -- second year of a second four-year term as county
22 commissioner in Pennington County, representing District 5. I
23 did serve as chairman of the commission in '21 and '22. I've
24 got experience on public bodies other than county commission.
25 I did serve as mayor of Pierre for 12 years. I also served on

1 the city commission for Pierre for three years prior to that.
2 In the early nineties and early 2000s, I served several years
3 on the Law Enforcement Standards and Training Commission,
4 serving at the pleasure of the Attorney General. And currently
5 I serve on the South Dakota Board of Water and Natural
6 Resources.

7 I'd like to present with you the statement of the
8 county commission responding to the complaints. Pennington
9 County Commissioners Deb Hadcock and Travis Lasseter allege
10 open meeting violations occurred at the Pennington County Board
11 of Commission meetings on June 6, 2023, and November 7, 2023.

12 Item one, June 6, 2023, Board of Commissioners
13 meeting, executive session. On this date, the Board of
14 Commissioners went into executive session for personnel matters
15 under SDCL 1-25-2(1) to conduct annual department head
16 evaluations. Prior to the Board of Commissioners meeting and
17 at the direction of Commissioner Hadcock, Holli Hennies,
18 commission office manager, drafted a memo to be included in the
19 executive session packet requesting that a department head
20 compensation wage review be completed by human resources.

21 Issues, Commissioners Hadcock and Lasseter now claim
22 it was not appropriate to discuss a wage study or wage
23 adjustments for current department heads in executive session.
24 They also claim the Board of Commissioners took official action
25 while in executive session by directing HR director, Carol

1 Bancroft, to conduct a wage study and market analysis for
2 department heads.

3 Our response, number one, 1-25-2(1) allows executive
4 session discussion relevant to the qualifications, competence,
5 performance, character or fitness of any public officer or
6 employee or prospective public officer or employee. Conducting
7 annual department head evaluations in executive session
8 certainly falls within the scope of allowable personnel
9 discussion under 1-25-2(1). Discussing the wages of current
10 department heads is directly related to their qualifications,
11 competence, and performance. Conversation during annual
12 department head evaluations may include discussion regarding
13 appropriate compensation, and session discussion is not limited
14 to only disciplinary matters.

15 Number two, when evaluating the qualifications,
16 competence, performance, character or fitness of current
17 department heads, it is relevant to discuss whether a new or
18 updated wage study and market analysis would be helpful in
19 evaluating the appropriate level of compensation for positions
20 held by current department heads.

21 Number three, no official action or vote was taken in
22 executive session approving or adopting a new wage study.
23 Rather, there was a consensus among the individuals in
24 executive session that a separate department head wage study
25 and market analysis would be helpful to the Board of

1 Commissioners in determining if the current department heads
2 are being compensated properly for the job duties performed.

3 Researching and reviewing comparable employee market
4 compensation for the county is a routine responsibility of the
5 HR department. The HR department is tasked with gathering the
6 information to assist the Board of Commissioners in its
7 decision making process. The final decision of whether to
8 adopt and implement a new wage study is left to the Board of
9 Commissioners in open session.

10 On June 6, 2023, the Board of Commissioners held a
11 regularly scheduled meeting with proper notice and agenda for
12 executive session to discuss personnel matters and took no
13 formal action while in executive session. Compare that to the
14 *Matter of Open Meeting Complaint 17-02, Oldham City Council*
15 where the city council held a meeting without proper notice or
16 agenda and actually took final action in executive session to
17 terminate several city officials.

18 Number four, it is within the discretion of a majority
19 of the Board of Commissioners to have preliminary personnel
20 discussions such as this in executive session, even when some
21 members of the board may prefer otherwise on occasion.

22 Item number two, November 7, 2023, Board of
23 Commissioners meeting, executive session. On this date, the
24 Board of Commissioners went into executive session for
25 personnel matters under 1-25-2(1) to conduct an annual

1 department head evaluation of the Pennington County Highway
2 Superintendent Joe Miller. As part of his evaluation, Mr.
3 Miller requested a wage adjustment for he and his assistant
4 superintendent based on performance and responsibilities
5 comparable to other county highway superintendent positions.

6 In support of his request, Mr. Miller provided a memo,
7 Management Self-Assessment for Performance Review, and
8 comparable wage documentation for the Board of Commissioners
9 consideration. At the conclusion of Mr. Miller's evaluation,
10 the Board of Commissioners returned to open session and voted
11 three to two to deny a wage adjustment for Mr. Miller at that
12 time while they waited for the completion of the department
13 head wage study. The Board of Commissioners took no action on
14 the request of the wage adjustment for the assistant highway
15 superintendent.

16 Issues are Commissioners Hadcock and Lasseter claim
17 review of comparable compensation documentation from other
18 jurisdictions submitted by Mr. Miller and discussion regarding
19 his request for a wage adjustment during his department head
20 evaluation is not allowed in executive session. Commissioners
21 Hadcock and Lasseter also claim the vote in open session by the
22 Board of Commissioners to deny a wage adjustment for Mr. Miller
23 was improper for failure to have a separate item listed on the
24 agenda for that specific purpose.

25 Our response, number one, 1-25-2(1) allows executive

1 session discussion relevant to the qualifications, competence,
2 performance, character or fitness of any public officer or
3 employee or prospective public officer or employee. During his
4 annual evaluation, Mr. Miller requested a wage adjustment,
5 given his work performance and the level of his responsibility
6 comparable to like positions in other jurisdictions. This
7 executive session discussion and review of comparable job
8 descriptions and compensation during Mr. Miller's annual
9 evaluation is well within the scope and subject matter allowed
10 under 1-25-2(1).

11 Number two, it is within the discretion of the
12 majority of the Board of Commissioners and not a violation of
13 open meetings law to discuss Mr. Miller's compensation
14 commensurate with his job performance, in executive session,
15 even when some board members may on occasion disagree.

16 Number three, the November 7, 2023, meeting agenda
17 item for executive session was properly identified as a
18 personnel matter under SDCL 1-25-2(1). It is the standard
19 practice of the Board of Commissioners to also list annual
20 department head evaluations when that is the topic for
21 discussion. On this occasion, that additional verbiage was
22 inadvertently left out. However, that level of specification
23 is not required as per South Dakota Attorney General's guide to
24 South Dakota's open meetings laws, revised 2023. The guide
25 indicates that a public body may close the meeting under 1-25-2

1 for the purpose of discussing a personnel matter, 1-25-2(1),
2 and a motion to that effect is sufficient. The November 7,
3 2023, meeting agenda identified both the correct statute and
4 purpose for executive session.

5 Number four, following the executive session, the
6 Board of Commissioners returned to open session, and under the
7 agenda item for personnel, voted to deny the superintendent's
8 request for a wage adjustment at that time.

9 CHAIRWOMAN SOVELL: You have five minutes remaining.

10 MR. DREWES: Thank you. The Board of Commissioners
11 did not list a separate item on the agenda to specifically
12 address a wage adjustment for Mr. Miller. However, the action
13 taken by the Board of Commissioners in open session was
14 directly related to a personnel matter properly noticed on the
15 agenda item. Nothing in SDCL Chapter 1-25 establishes how much
16 detail must be used by a public body to identify agenda items.
17 That is particularly understandable when considering items that
18 are discussed in executive session. I'm not going to read, but
19 I provided to you copies of several decisions by the Open
20 Meetings Commission supporting our claims.

21 In conclusion, the Pennington County Commission
22 respectfully requests the Open Meetings Commission find the
23 open meeting complaints made in this matter are without merit,
24 specifically that the subject matter of discussion and the
25 information considered in executive session on June 6, 2023,

1 and November 7, 2023, did not violate open meetings law, that
2 no official action was taken in executive session on June 6,
3 2023, and that the action taken in open session on November 7,
4 2023, denying a wage adjustment for Mr. Miller was sufficiently
5 noticed under the agenda item for personnel. We would be happy
6 to stand by for any questions. Thank you.

7 CHAIRWOMAN SOVELL: Okay, you will have three and a
8 half minutes left. I know you had other presenters, I don't
9 know if you want to do that now or reserve that for -- how you
10 want to divide it.

11 MR. LACROIX: We can reserve.

12 CHAIRWOMAN SOVELL: I apologize. It's the complainant
13 that has the rebuttal period. You just need to decide how you
14 want to divide it among you at this time.

15 MR. LACROIX: I think we have presented what we need
16 to present. The only thing I would like to say in our closing
17 comments is that we are dealing with public employees, and it's
18 with the utmost respect to bring that out into the public to
19 create anxiety and hardship for public employees, whether it's
20 good or bad, that's why we have these personnel items in
21 executive session. And I feel we did not violate the open
22 meetings law.

23 CHAIRWOMAN SOVELL: You do still have a little
24 additional time, if there's anybody else with respect to the
25 commission.

1 MR. LACROIX: We are good.

2 CHAIRWOMAN SOVELL: Thank you. With that, we will go
3 back to the complainants, and you are authorized to use your
4 remaining time to respond.

5 MR. LASSETER: Travis Lasseter, Pennington County
6 Commissioner, District 4. I guess I would like to just add to
7 this, again, I won't take up too much time, but I do believe
8 when we were discussing the annual review and the
9 qualifications, the assistant superintendent of the highway was
10 in there; so it couldn't have been an annual evaluation if the
11 assistant superintendent was in there. So we were talking
12 about the market analysis during that particular meeting, not
13 the actual review of that individual. Then the assistant
14 highway superintendent stepped out, and then there was the
15 annual review. Again, we are going to maintain the piece when
16 we were talking about the market analysis for that particular
17 position of the highway superintendent should have been
18 discussed in public.

19 When talking about directing staff, typically when we
20 talk about actions to direct staff, we always do it in the
21 public side. We make a motion to direct staff to do this with
22 the budget, this or that, whatever it happens to be. Any
23 conversation in executive session that says let's do a wage
24 study should have come forward to the public and said let's put
25 this officially to the public and let them know we are doing a

1 wage study. Outside of that, I think that's all I'd like to
2 rebut to make sure it was in the record.

3 CHAIRWOMAN SOVELL: I do have one just for
4 clarification, as I'm going through the materials and listening
5 to the presentations here. There was an actual vote with
6 respect to the salary in executive or there was not?

7 MR. LASSETER: The vote for which, are you talking
8 about the salary for the highway superintendent?

9 CHAIRWOMAN SOVELL: Actually, for anyone. Was there a
10 vote in executive that was directly related to the salary
11 increase?

12 MR. LASSETER: In executive session, salary increase,
13 no, but for directing a wage study, there was no vote. There
14 was a statement to do a wage study, and then the wage study
15 went. We should have taken that, like we have done with any
16 other directives to the staff, to publicly vote on it, from our
17 perspective of other things that have happened in the past of
18 directing staff to do this or that.

19 CHAIRWOMAN SOVELL: Thank you. I think that will help
20 for the record.

21 MS. HADCOCK: Any other questions for me? I've been
22 in politics for 18 years, and I still can't stand at the podium
23 and speak. I'm better sitting down. The bottom line is I
24 thought we were going in there for basically to look at Joe and
25 tell him good or bad what was happening, basically his review.

1 His review went into, as we noticed on the material, into a
2 wage comparable and a market analysis that we believe shouldn't
3 have been there.

4 Then there was also two motions from Joe to discuss
5 not only his competence but his assistant's competence. So in
6 that, that's where we found a violation. We said this is
7 not -- and in executive session, we said this is not supposed
8 to be here. Wage comparables and market analysis are supposed
9 to be up front. We continued to discuss it in executive
10 session.

11 Again, if a memorandum was sent by a commission
12 manager that I had sent, you would want to sign it, wouldn't
13 you, if it was my material or I wrote it? That's my bottom
14 line with that. If it was a conversation, it's different than
15 a memorandum that should be sent by one commissioner and then
16 signed at the bottom saying I said these things. So that's why
17 I said I did not author it, I did not write it, on that
18 memorandum.

19 CHAIRWOMAN SOVELL: Just so that the folks who are
20 listening are clear, please articulate again the motions that
21 took place in executive session.

22 MS. HADCOCK: On that, there wasn't a motion. That
23 motion was done in compensation committee to bring it forward,
24 and Holli must have been in there, I don't think she's on the
25 compensation, but she was in there, and she took it as a

1 directive maybe that we have that in executive session because
2 we had discussed it, but it's not something that you would move
3 forward if you weren't supposed to do it in the first place.
4 Like I said, if I would have seen that and wrote or signed that
5 memorandum, it would have been a little bit different
6 beforehand. Again, my name was on it, but I did not write it
7 and I did not author it.

8 MR. HOFFMAN: I have one question for you. You stated
9 that there was one or two motions made by Joe in executive
10 session. Can you give a little more detail on that?

11 MS. HADCOCK: His motions were basically on the paper
12 you see, you guys have that information. It shows two motions
13 that he wants us to make when we come out of executive session,
14 if you see that, and then I can't remember, when we came out of
15 executive session, basically we did not give him a raise or
16 something at that point.

17 So they did use the information from the comparables
18 and the market analysis by Lightcast and looked at his motions
19 and said, when they came out, we are not giving you this. But
20 again, his wage comparables and market analysis is supposed to
21 be in executive session. Because we are doing a wage study at
22 this time trying to figure out on everybody what we are
23 supposed to be doing or what we are going to do with them, and
24 I believe that should be out front, that shouldn't be in a
25 department head review.

1 MR. SMITH: For clarity, could you identify who Joe
2 is?

3 MS. HADCOCK: Joe Miller is our highway
4 superintendent.

5 MR. SMITH: He was in the executive session, but then
6 those motions were made by him or by someone else in executive
7 session?

8 MS. HADCOCK: Those motions were put on a piece of
9 paper in executive session, and those are the motions he wanted
10 when he came out.

11 MS. HOFFMAN: It's your board's practice for employees
12 of the county to propose a motion like the highway
13 superintendent did, that's what was then discussed in your
14 executive session, but no formal board action was taken in the
15 executive session on the proposed motion that the highway
16 superintendent made as to the compensation he believed he and
17 his assistant deserved?

18 MS. HADCOCK: Right. He just did -- what happened in
19 executive session is they discussed everything on Joe's paper,
20 and like I said, I thought it was a department head review and
21 we were going in there for something for department head
22 review. He turned it into he needed a raise, he needed this
23 and that. I said this is not appropriate, the personnel matter
24 was the review.

25 I have never seen, since I've been in politics for 18

1 years, someone goes in for a review and then come in say, I'd
2 like a raise for Joe and Sean, and I did market comparables,
3 market analysis, and then put motions on there. And then we
4 come out of the department head review and make a motion that
5 we were not going to give him a raise. So I thought that was
6 kind of like, where did this all come from?

7 MS. HOFFMAN: Was it customary for the board to have
8 market analysis done from time to time?

9 MS. HADCOCK: Market analysis and wage adjustments
10 should not be done in executive session because we were doing a
11 wage study, and at that point we didn't have the information.
12 So if they ever did those, which wasn't -- if I recall, I don't
13 remember on any department head review we have ever done them.
14 But later on they started using them, once they were making
15 exceptions in executive session for wage comparables and market
16 analysis, which would have been another complaint added on,
17 because we had not done a wage comparable market analysis. It
18 was being done at the time, and for some reason, this was let
19 to be in executive session for discussion and then having --
20 like I said, it shouldn't have been a discussion in the first
21 place, I believe, until we actually had a wage study, we had
22 something to go by on his analysis.

23 MS. HOFFMAN: I have one other question. When you
24 talked about when you first spoke of the different policies
25 that were in effect, one in January of 2024 and it changed from

1 that in October of 20 --

2 MS. HADCOCK: '23 to '24.

3 MS. HOFFMAN: -- what was the reason for that change
4 in your policy?

5 MS. HADCOCK: I believe because we were -- Travis and
6 I were both complaining a lot about how they were doing their
7 process, and then it changed from '24 because there was so many
8 exceptions behind the scenes that we believed needed to be out
9 front at that time, and then we believe that in '24 they had
10 changed the policy to more of the state policy instead of
11 putting it as challenges.

12 CHAIRWOMAN SOVELL: So the determination to conduct
13 the wage study was initiated in executive and decided in
14 executive but at some point came out into the public?

15 MS. HADCOCK: Should have been done on compensation
16 committee, right, and then the compensation committee brought
17 it to the board. And at that time it was about department head
18 reviews and evaluations, which I'll tell you the truth, they
19 did a resolution that they took back in executive session later
20 on department heads and then came out with that resolution and
21 voted on it, when that resolution should have been voted in
22 executive session as well.

23 So some of this, I'll just be up straight, some of the
24 wage study evaluations and the things that were being done, I
25 truly believe, from being in politics, being in executive

1 session enough, that some of this stuff, the people's business
2 should be up front, and the people's business should know what
3 is happening and not being so much done behind the scenes.

4 CHAIRWOMAN SOVELL: Other questions from Commission
5 members?

6 MS. HADCOCK: One more thing, if I can say it. The
7 deputy state's attorney from Lincoln County and the
8 investigator also found that they weren't taking a look at this
9 with you guys for a reason, and I believe that reason is a
10 fact, that this is not once, it has gone on many times. And we
11 truly tried to bring it up many times on the dais for training.
12 We have brought it to the state's attorney, and we kept getting
13 shot down that we did not need the training, that the
14 department heads didn't need the training, and commissioners
15 were fine with it. So we are just looking for some resolution
16 out of this so we can move forward and make sure the public's
17 business is done in the public.

18 CHAIRWOMAN SOVELL: Thank you. Okay, I believe the
19 oral presentation portion of this hearing has concluded; so we
20 will move into the deliberation portion. I will just start the
21 discussion. It's an interesting and difficult review because
22 of the fact that, one, we don't have solid information of what
23 happens in executive session. We don't have the minutes. We
24 don't have a lot of the information that we do when we are
25 sitting in open session.

1 Two, for me it's very difficult to parse and parcel
2 employee review and compensation. A lot of times they do end
3 up merging, but here where you have a full-blown discussion on
4 the analysis, the wage and salary assessment overall, is that
5 something that's appropriate to hold in that executive session
6 where you are talking about an individual's performance or not?
7 I don't know.

8 MR. HOFFMAN: I guess my question with that would be,
9 is talking about wages considered a contract negotiation with
10 the employee, which would be a valid reason for something to be
11 discussed in executive session.

12 CHAIRWOMAN SOVELL: I don't know that it's contract,
13 it's personnel. We are not dealing with a contract per se.
14 That's a good point.

15 MR. SMITH: Michael Smith. If there's something there
16 as it relates to contractual too, I imagine it also wouldn't --
17 it would potentially apply to department head that's not
18 elected, but does that analysis change on elected department
19 heads as well?

20 CHAIRWOMAN SOVELL: I think you would have to
21 articulate your reason for entering outside of personnel on
22 that.

23 COURT REPORTER: You know what? I don't think the
24 people on Zoom can hear you. And I can't really either.

25 CHAIRWOMAN SOVELL: I'm sorry. The deliberation

1 portion is hard, sometimes we have them where they are not
2 recorded; so I will do a better job. It may be the way we do
3 this is where it's segmented out by the three different
4 concerns that were expressed by Drew DeGroot with the civil
5 Deputy States Attorney's Office in Lincoln County. The first
6 is whether directing the human resources director to conduct a
7 department head wage study and market analysis would constitute
8 an official action outside an open official meeting in
9 violation of 1-25-2, SDCL 1-25-2. We will take them one at a
10 time. What do we think in response to that number one
11 question?

12 MR. HOFFMAN: There's two ways I think to look at
13 that. Number one, there wasn't a motion and a vote, but the
14 other side of that is just because there was not a motion and a
15 vote, does that mean it was not an official action? If there's
16 a consensus among commissioners telling the HR representative
17 to do something during executive session, even though there
18 wasn't a motion and a vote, to me that sure seems like an
19 official action, it does.

20 MS. HOFFMAN: If the wage studies and the market
21 analysis is something that's customarily been done by that
22 position, is that really rising to the level of having them --
23 that would be the equivalent of me being in executive session
24 and someone saying, go prosecute a case. Well, that's
25 something that I already do, that's customary to my position.

1 So is having someone perhaps do a duty that they have already
2 been assigned or that they are already required to do, it
3 sounds like from the testimony that it's something that they
4 had routinely done, maybe even more frequently. I guess that's
5 where I have a hard time wrestling with that.

6 CHAIRWOMAN SOVELL: I agree with comments on both
7 sides of that. I think yes, they obviously agreed that
8 something should take place, that being that wage study and
9 analysis, but you are right, very often in employee reviews
10 where we are determining the different duties, what they should
11 do and shouldn't do, we are giving directives to address those
12 areas protected under statute.

13 It's hard for a lot of folks, including me, to say,
14 okay, we should be able to do this, we should be able to start
15 addressing funds and monies and dollars in executive session
16 but no official action was taken, it was an information seeking
17 directive.

18 MR. HOFFMAN: The information seeking point that you
19 made I think is very good. I did not think about it like that,
20 but now that you say that, that's really what was going on,
21 they were seeking information about the wages that other
22 highway superintendents across the state and maybe country, I
23 can't remember exactly what was all in there, were getting. It
24 wasn't a vote on whether the highway superintendent was going
25 to be making a certain amount of money or not.

1 I don't think there was any testimony -- there wasn't
2 any testimony saying that any kind of a vote on a salary was
3 taken, but there was a decision made of well, let's look at
4 this and figure it out to see what other people are making in
5 this position, which really it is just looking for information
6 from other counties.

7 CHAIRWOMAN SOVELL: I also can understand the
8 conundrum from the folks that are in there going hey, wait a
9 minute, we are talking about money, we are talking about public
10 dollars, should we not be laying this out on the table for
11 taxpayers to look at. It's tough, but I think I do go back to
12 that, we get that information to present to the public as a
13 whole, we are not telling somebody how to gather it. That's
14 not to say that I don't think you could do this in open session
15 also.

16 MS. HOFFMAN: I would agree with that.

17 CHAIRWOMAN SOVELL: Maybe that's a better practice
18 ultimately so that people don't think that we are hiding these
19 things behind closed doors, is to say we are going to have this
20 assessment, this analysis done and have our public minutes
21 reflect it, but to come forward and say it's a violation, I'm
22 not sure it is.

23 MR. HOFFMAN: I would agree with that.

24 CHAIRWOMAN SOVELL: I don't know if we want to do
25 these one by one or if we do an analysis, our board, on one,

1 two, and three and come back and do a final vote. I'm leaning
2 going through each one of them, and we will come back to if
3 there is any violations. Number one, the discussions on the
4 information seeking is what I will call it for a wage study has
5 been addressed.

6 We will go into discussion of whether the discussion
7 of the highway superintendent's compensation exception request,
8 in addition to his annual review, violated SDCL 1-25-2(1).
9 Again, with no formal action being taken, these discussions on
10 the compensation exception request and those types of things,
11 should those be out in the open where the people who are
12 writing the checks, the taxpayer dollars, are able to see it or
13 are those appropriate for personnel within SDCL 1-25-2?

14 MR. HOFFMAN: Maybe one of you has this on hand here,
15 but I don't know if this is going to make a difference on how
16 I'm looking at this or not. But was the highway
17 superintendent's compensation exception on the agenda
18 specifically?

19 CHAIRWOMAN SOVELL: As I reviewed back through the
20 materials, I don't think that there ever was, we are getting
21 some head shakes no, and I think we are safe to ask the
22 commission members and the complainants both. Was that
23 officially out there on any agenda?

24 MS. HADCOCK: No.

25 MS. HOFFMAN: I have the November 7, 2023, agenda up

1 and it was item number 19 is the only one I could find that
2 related to it, and it just said county employee wage study
3 update, nothing specific as to the highway superintendent.

4 MR. HOFFMAN: However, annual department head --

5 MR. RUSSELL: Lance Russell.

6 CHAIRWOMAN SOVELL: Go ahead, Lance.

7 MR. RUSSELL: The question that I had for Mr. Drewes,
8 after listening to all of this, there was a statement made that
9 the exception request was essentially front and center on the
10 discussion and there was -- this was not only for the highway
11 superintendent but also for his deputy superintendent, and then
12 the deputy left the room, is my understanding, and then there
13 was further discussion. So my question is, is that
14 uncontroverted? Is my understanding of that process correct or
15 is the commission disputing that particular item, the majority
16 of the commission I should say?

17 MR. DREWES: Madam Chair, Commission members, Gary
18 Drewes again. On that particular date, I believe that the item
19 that we went to executive session for was the annual review of
20 the highway superintendent. The highway superintendent is the
21 one that presented, in executive session, his argument for a
22 wage adjustment for himself and his assistant. He brought the
23 information, the comparable information, for that discussion
24 into the room. That was not provided, in my recollection, by
25 any commission member, it was done strictly by the highway

1 superintendent.

2 MR. SMITH: This was at a time when the wage study
3 that had been ordered in June was still pending, it hadn't been
4 completed yet?

5 MR. DREWES: That's correct. That was not anticipated
6 being completed till early 2024.

7 MR. HOFFMAN: The highway superintendent and the
8 assistant superintendent, they were both there when that was
9 brought up, one of them then left, and the department head
10 evaluation was completed?

11 MR. DREWES: Yes, I believe that the presentation of
12 the information was done by Joe Miller when both Joe Miller and
13 his assistant superintendent were in the room. The assistant
14 superintendent then left after that and his annual, then Joe
15 Miller's annual evaluation was completed at that time.

16 CHAIRWOMAN SOVELL: Thank you. If fairness to the
17 complainants, do you have anything to respond as to the facts
18 that were just presented?

19 MR. LASSETER: Travis Lasseter. If I heard correctly,
20 he regurgitated everything I said. Sean and Joe were in there
21 during the wage study presentatin, that Sean left and it was
22 just Joe Miller who finished out his annual review.

23 CHAIRWOMAN SOVELL: Thank you.

24 MR. SMITH: I think that it's interesting of course it
25 sounds like, correct me if anyone sees this otherwise, but I

1 think the highway superintendent is the one who brought forth
2 the request, not necessarily the commission. I think the next
3 question becomes whether or not that specifically tied to the
4 discussions of qualifications, competency, performance,
5 character or fitness discussed in 1-25-2(1).

6 CHAIRWOMAN SOVELL: Again, this is Emily Sovell
7 responding to that. When you are talking about performance, if
8 someone is coming into executive session to say the
9 performance, I've had an increased level because we have
10 increased X, Y, and Z and therefore, I think that salary should
11 be adjusted because of that, I think it's very hard to separate
12 those two things for general discussion purposes when the
13 employee is coming in. I think that's not uncommon for an
14 employee to come in and say, I'm underpaid for what I do. Most
15 of them don't come and say, I'm overpaid for what I do, at
16 least from my experiences. But it is difficult again when you
17 are dealing with public funds.

18 MR. HOFFMAN: A lot of this, especially looking at the
19 review, department head review, I have to relate it -- I was in
20 the private sector for about five or six years before I went to
21 law school. I had an annual review at that job every year. My
22 salary was specifically discussed during that annual review. I
23 know this is not the private sector, this is public open
24 government.

25 I think it's very difficult, if not almost impossible,

1 to have some form of a salary discussion during a review of how
2 you are doing for a job. I mean, that's just going to be very
3 difficult to do. It doesn't seem that any decisions were made,
4 I don't think -- there has not been any testimony that a
5 decision was made on compensation while in executive session.
6 They came out of executive session and then held that vote.

7 I don't see how you are going to necessarily have a
8 review of somebody's performance without at least a little bit
9 of a discussion involving compensation. Is it possible? Of
10 course it is. But in reality, that's very difficult to do.

11 MR. SMITH: I would agree with that statement. I
12 believe what you are saying, from a common sense perspective,
13 holds truth as well in that it's really hard to evaluate
14 someone's performance, especially if you are doing an annual
15 review, without discussing the future and what that person, the
16 value they hold, and the value they hold in part is what you
17 pay them.

18 Of course the performance that they do is what they
19 are paid for, but ultimately as we are discussing performance,
20 we live in a world, regardless of if you are working for the
21 public sector or private, in which dollars is what you are
22 compensated in, and ultimately that's going to be on the
23 forefront of anyone's mind as they have this discussion as it
24 relates to their performance.

25 I think it also needs to be stated, obviously as was

1 stated, we are talking about public funds, we are talking about
2 open meetings and public funds specifically and how much weight
3 do we need to give that compared to private sector, and I think
4 that certainly is a question that needs to be answered before
5 we make a decision today.

6 MS. HOFFMAN: I don't disagree there will, nine times
7 out of 10 or even higher than that, be bleed over into the wage
8 discussion, but I think when you look at the statute and you
9 look at that subsection specifically, it says that executive
10 sessions may be held to discuss the qualifications, competence,
11 performance, character or fitness, and it doesn't talk about
12 wages. I think it maybe specifically excludes that because we
13 are talking public sector, not private sector.

14 One of the statements that was made in the
15 investigation through the Lincoln County State's Attorneys
16 Office was that when the commission members were interviewed
17 about the complaint, they indicated right away that the
18 complaint was related to meetings involving pay increases for
19 individual employees, specifically the department heads. There
20 was no bleed over in that comment. I think it was apparent
21 what was being discussed, and I don't know there's necessarily
22 a disagreement with what was being discussed in executive.

23 I think that the board members would concede that they
24 did in fact discuss specifically wages, and because it's not
25 listed as a permissible reason to be in executive session, I

1 sort of tilt the other way, that I think at some point it can
2 exceed the scope, and I think the point of having open meetings
3 and the reason why there's a commission is to insure that we
4 are not exceeding that.

5 CHAIRWOMAN SOVELL: And there is one other subsection
6 that we are dealing with here in the issues presented by the
7 special state's attorney, and that's whether the board violated
8 SDCL 1-25 by taking on a non-agenda item during the November 7,
9 2023, commission meeting, and I think that's specifically
10 discussing the motion made regarding the salary that was
11 ultimately voted down.

12 I don't know the specific agenda item, but they had
13 general line item regarding to the employees, but they did not
14 have anything specific to the vote on the salary increase or
15 decreases that may have turned out. On that particular issue,
16 do we feel as though if you are going to go into a vote on
17 employee increase or decrease, should that have to be separate
18 from our previous decisions that general discussion items may
19 be acted on? It's impossible to put every single employee
20 issue on, but is that something that we are viewing under a
21 different lens?

22 Here it says, pursuant to the meeting minutes, formal
23 action was taken after the executive session, the board voted
24 to deny the highway superintendent's request for a salary
25 increase. Such action was not on the commission's proposed

1 agenda for November 7, 2023, nor do meeting minutes reflect an
2 amendment to the proposed agenda prior to the agenda's
3 approval. The commission voted the highway superintendent --
4 the commission denied the highway superintendent's request, and
5 then it refers specifically to the November 7, 2023, meeting
6 minutes, no vote was taken on the request to increase the
7 assistant highway superintendent's salary.

8 MS. HOFFMAN: Kate Hoffman again. I don't know who
9 put a quarter in me, but here I go. When I look at the agenda
10 item that I pointed out on the November 7, 2023, agenda, item
11 number 19, it just says items from compensation committee, and
12 then subsection A reads county employee wage study update. The
13 corresponding minutes then that follow after, it would be page
14 11, it reads, items from compensation committee, sub part A,
15 county employee wage study update. Then it specifically reads,
16 information only. Then it shows that the motion was made.

17 We talked a week ago Monday actually about -- I'm not
18 going to get the right township correct, town correct, was it
19 Martin, where they had just law listed on their agenda, and I
20 think it was one of the proponents who said we can't cover
21 everything, and law historically, the way they had presented
22 that evidence, show that there is going to be a law enforcement
23 update, and I found that to be sufficient, we as a board did.

24 This one is a little bit different to me because it
25 appears that it is going to be simply an update, it gave more

1 information, and you don't want to fault the city -- you don't
2 want to fault either party, the city for saying if you make it
3 broad enough, everything will fit in there, or here if you make
4 it too succinct, then I'm going to hold you to it.

5 But this one, ultimately no monies were spent, nothing
6 along that line, it was denied in fact, but I don't know that
7 that was appropriate when you had it worded in the way you did
8 on the agenda and then reflect in the minutes, the record of
9 the meeting, that it was information only and then you went and
10 took board action on it.

11 CHAIRWOMAN SOVELL: I agree with that. I think that I
12 have the same mental fall back on the discussions of those
13 broad agenda items when I was looking at it, but here I don't
14 think a general public, an individual, a body, a board, anyone
15 wanting to know what was happening would think that we were
16 going to have a vote on that, and just because it was voted
17 down and not approved, we were still dealing with public funds.

18 MR. HOFFMAN: I would agree with that. When I was
19 reviewing this one, frankly, this was kind of the portion of it
20 that I personally had the biggest concern with, for two
21 reasons. Number one, when you look at the exact line items for
22 executive session under paragraph 26, personnel issues,
23 contractual, pending litigation, it there's somebody from the
24 public that would want to come in and say either hey, I don't
25 think our highway department superintendent should get a raise

1 or somebody wants to come in and say hey, I think our highway
2 department superintendent should get a raise, I don't see how
3 either of those are going to give the public notice that a
4 raise or not a raise for the highway superintendent is going to
5 be discussed.

6 Nor do I see item number 19, county employee wage
7 study update, giving notice to the public of an increase or
8 stays the same for -- or the salary stays the same or increases
9 for the highway superintendent. I don't see that being
10 something that should have been voted on the way this agenda
11 was put together.

12 CHAIRWOMAN SOVELL: Now when we all go back to our
13 home counties and your auditors yell at you because every time
14 it's addressed where there is an across the board budget
15 assessment and they do the increases in our salaries, are we
16 going to start setting a new precedent that we have to
17 articulate every time they are going to look at increase in the
18 salaries, rather than the general broad budgeting or general
19 broad increases? I don't know, but I agree with you that as I
20 look at the agenda, I would not have expected that action to be
21 taken.

22 MR. HOFFMAN: I guess looking at it from personal
23 experience, generally speaking, when our county looks at giving
24 salary increases, decreases, we will say salary changes. It's
25 generally discussed as a whole, and it's on the agenda, some

1 form of salary increase or remain the same. Those discussions
2 generally take place not for one individual person, it is for
3 everybody.

4 CHAIRWOMAN SOVELL: Three percent across the board?

5 MR. HOFFMAN: It's an across the board discussion,
6 either everybody is getting a raise or nobody is getting a
7 raise. I certainly haven't been doing this for as long as some
8 others have, but almost a decade now, and I only remember very
9 few times where our commission has talked about some form of
10 salary change for an individual person, and when that has
11 happened, to the best of my recollection, that specific person
12 or position's salary, that has been on the agenda, which then
13 gives that notice to the public, if they want to come in and
14 talk about that, they certainly can.

15 The same would be true when you are looking at an
16 overall raise for everybody. If somebody from the public wants
17 to come in and say, hey, I don't think anybody deserves a raise
18 or I think everybody should get a 20 percent raise, which is
19 not going to happen, but it's at least giving notice. I just
20 fail to see how this agenda is giving notice that the highway
21 superintendent's salary is being voted on.

22 CHAIRWOMAN SOVELL: Okay.

23 MR. SMITH: I think there's precedent from this
24 Commission, I think Deadwood City Commission 15-03, I think
25 stands for the proposition ultimately that official action may

1 only be taken at a properly noticed official meeting. And here
2 I think the question is, as it relates to these agenda items,
3 the agenda item 19 as it relates to items for compensation
4 committee and then number 26 for executive session, does that
5 give the proper notice necessary for the public to be on notice
6 as to what may be coming down with the vote on the
7 superintendent's salary?

8 And I think that from the conversation, I agree with
9 Mr. Hoffman here as well, I don't think there was enough notice
10 here given that would have given the public enough information
11 for them to be aware that this was going to be brought before
12 the commission on a vote after that executive session.

13 CHAIRWOMAN SOVELL: My initial reaction was I was
14 going to just call for a general overall motion, but I think
15 because we are getting a little bit of a different analysis
16 from the different commissioners on each one, we are not in a
17 consensus on one through three, I'm going to hit pause and go
18 to Mr. Blair. Anything historically where we have broken them
19 out where there is three separate issues where we have taken a
20 separate vote on each?

21 MR. BLAIR: I think the most appropriate thing for
22 purposes of informing the public but also preparation of the
23 findings would be to take votes on the three items separately.

24 CHAIRWOMAN SOVELL: I'm going to go through and
25 reiterate number one. Is somebody inclined to address by

1 motion whether directing the human resources director to
2 conduct a department head wage study and market analysis would
3 constitute an official action outside an open official meeting
4 in violation of SDCL 1-25-2? We will go back to that, now that
5 we have muddied through the waters by going through all three
6 and not taking a vote as we went along.

7 MR. HOFFMAN: I will make a motion to find that that
8 was not a violation of the open meetings law.

9 MR. SMITH: I would second that.

10 CHAIRWOMAN SOVELL: We have a motion, we have a
11 second. With that, I will call for a vote. All in favor of
12 finding that was not a violation, signify by saying "aye."

13 (Motion passed unanimously.)

14 CHAIRWOMAN SOVELL: Anyone in opposition, signify by
15 saying "aye." Hearing none, unanimous vote in favor of finding
16 no violation on the issue one presented. Going to number two,
17 whether discussions of the highway superintendent's
18 compensation exception request, in addition to his annual
19 review, violated SDCL 1-25-2(1). Further discussion or is
20 someone inclined to make a motion on that particular issue?

21 MS. HOFFMAN: I do believe that that was a violation;
22 so I would make that motion.

23 CHAIRWOMAN SOVELL: We have a motion. Is there other
24 discussion on that? Anyone inclined to second a motion for a
25 violation on the second issue presented?

1 MR. RUSSELL: This is Lance Russell in Hot Springs.
2 And I did not hear -- as it relates to SDCL 25-2-3, consulting
3 with legal counsel or reviewing communications from legal
4 counsel about proposed or pending litigation or contractual
5 matters, I do believe that it may have actually been a
6 contractual matter as you construe it with SDCL 1-25-2(1)
7 together. However, I did not hear any information that there
8 was any kind of communication from legal counsel or legal
9 counsel was present; so under that circumstance, unless there
10 is contradicting information, I will support the motion also.

11 CHAIRWOMAN SOVELL: So is that a second?

12 MR. RUSSELL: No. But I will support it.

13 MR. HOFFMAN: Just to add to the discussion here, I
14 completely understand where Mrs. Hoffman's view is coming from
15 on this. The only reason I will not be seconding that motion
16 is because it was the HR director that brought that into the
17 meeting. It was not, from my understanding of the testimony,
18 it was not the commission that began that conversation. If it
19 would have been the other way around, I would have a very
20 different view on this.

21 MR. SMITH: I would say I think I agree with that
22 statement. The HR director and the superintendent himself are
23 the ones that really brought this before the executive session,
24 which is certainly different than the commission making it an
25 issue in executive session.

1 MS. HOFFMAN: Wouldn't it be the responsibility of the
2 commission to get out of executive session, hey, this exceeds
3 the scope, let's continue on with what we are here for, what we
4 called the executive session for, but instead they went and
5 allowed it and they continued those discussions about the
6 wages, which is not included in the statute for a reason to go
7 into executive session. So while they are not the ones that
8 are necessarily at fault for it, they become at fault when they
9 just allow the behavior, they just allow that to bleed into the
10 executive session for an inappropriate reason.

11 MR. RUSSELL: The other thing that I have -- this is
12 Lance Russell again -- I thought that I had read in there where
13 this was actually put in writing and there was a policy that
14 these types of exceptions have to be essentially vetted prior
15 to the commission meeting in executive session taking these
16 items up. So from my standpoint, it appears to me that the
17 commission was in fact on notice, probably in writing and
18 pursuant to their own policy, prior to taking this issue up,
19 number one.

20 But number two, the only way that I would think that
21 it would fit the statute is if it was a contractual matter
22 under subsection 3 of that particular statute, that it was
23 discussed with some kind of either communication from the
24 State's Attorneys Office or counsel for the commission or the
25 state's attorney or deputy state's attorney or counsel were

1 present during that discussion.

2 I guess what I'm interested in knowing is am I
3 incorrect in noting that the board actually got a writing to
4 this effect prior to this consideration of this exception
5 request?

6 CHAIRWOMAN SOVELL: That's a question out to the
7 commission? Do you want them to address that?

8 MR. RUSSELL: Well, it was to either of the
9 commissioners or to the -- if we can't answer it, to either the
10 proponents or opponents.

11 MR. SMITH: In our packet there is a memo written from
12 Joseph Miller to human resources dated October 31, reference
13 compensation exception request, with the request Board of
14 Commissioners meeting date being 11-7 of 2023. I'm not sure if
15 there's enough in the packet to support whether or not that
16 information was then provided to the commission prior to the
17 7th meeting, but it appears that it had been a memo and a
18 request had been made prior to that meeting.

19 CHAIRWOMAN SOVELL: I'll just ask the question first
20 to the complainants. Was that information available prior to
21 that meeting?

22 MR. LASSETER: Correct.

23 CHAIRWOMAN SOVELL: And commission, do you agree with
24 that statement?

25 MR. DREWES: Yes. Can I approach, though?

1 CHAIRWOMAN SOVELL: I think do you want any further
2 elaboration on that, Lance, or was it just confirmation whether
3 it was available or not?

4 MR. RUSSELL: Yeah, I think to be fair, I would like
5 to know particularly if legal counsel was present or there was
6 any kind of written communication from legal counsel.

7 CHAIRWOMAN SOVELL: We will start with the commission
8 and come back.

9 MR. DREWES: My recollection or I asked the chairman,
10 legal counsel was present. The superintendent, Joe Miller, did
11 bring that in advance to the meeting, and I believe that HR
12 also was on the opposite side of Joe's recommendation, and so
13 HR, Carol Bancroft, also presented a written statement being
14 opposed to an adjustment to wages, I believe.

15 CHAIRWOMAN SOVELL: Thank you. We will give the
16 opportunity for the complainant to also comment on that.

17 MR. LASSETER: I seem to remember it a different way.
18 I don't remember our legal counsel being there. I do remember
19 Joe, the highway superintendent, his second, and HR, myself,
20 and the commissioners, I'm not going to swear legal counsel
21 wasn't in there, but I don't remember legal counsel being in
22 there at the time.

23 But we had a policy of how to navigate through things
24 and again, this isn't a contract with a county employee, and a
25 county employee is an employee, it's not a contract, they are

1 there, we hire them or the department head fires them, it's not
2 a contract per se in light of the word. (Inaudible)

3 COURT REPORTER: Excuse me. It's not a contract per
4 se in light of the word?

5 MR. LASSETER: It's not a contract because they are
6 staff members. It's not like we are drafting a contract for
7 purchasing a building or drafting a contract with a
8 construction project manager to build a building. That would
9 be a contract. This is literally a staff employee conversation
10 or whether their evaluation warrants what they are asking for,
11 but the wage study really was to set the precedent, not
12 directly correlating with him, but that wage study was trying
13 to present to us that he's already done a compensation wage
14 study on that particular piece, the highway superintendent
15 piece, not necessarily Joe Miller's position piece, even though
16 he is the highway superintendent. Does that clarify?

17 CHAIRWOMAN SOVELL: Thank you.

18 MR. HOFFMAN: Sometimes a can of worms just keeps
19 getting bigger.

20 MR. LACROIX: I can answer one thing with the
21 superintendent. He is contractual for two years.

22 CHAIRWOMAN SOVELL: From the floor was he is
23 contractual for two years was the comment. With that, we do
24 have -- we still have the motion on the floor for the
25 violation, there has not been a second on that. So before I

1 lose track of where we are, is there any further discussion?

2 MR. HOFFMAN: Does that change anything how you are
3 looking at this?

4 MS. HOFFMAN: No, and in fact the information that was
5 provided and the fact that they have the wage studies prior to
6 I think gives credence to the fact that they knew that was
7 going to be discussed in executive session. And to the point
8 that was made about the highway superintendent being involved
9 in a contract, it's my understanding through a county, there's
10 an appointment made every two years and it reups every time,
11 that's the contract, if you will.

12 I still don't believe that that is a valid reason to
13 be in executive session. I understand the bleed over and I
14 completely understand that, but I think at some point, even if
15 it wasn't the intent of the commission when they went into
16 executive session, although the information knowing they had
17 the wage -- that motion prepared, two of them beforehand, I
18 think a reasonable person would believe that's something that's
19 going to get brought up if you are talking about job
20 performance. And I think when that line was crossed, which
21 they are conceding to, that it did occur in executive session,
22 that at that point it should have been shut down because it
23 exceeded the scope. So I still stand in my motion.

24 CHAIRWOMAN SOVELL: Motion is still pending. Any
25 further discussion? Anyone inclined to second that motion?

1 MR. HOFFMAN: This one is tough, frankly. Sometimes
2 there's more than just two ways to look at things, and I
3 certainly think this is one of them. But at the end of the
4 day, I think what Mrs. Hoffman is saying is right. If we are
5 going to strictly look at the statute, wage discussions are not
6 in there. What I had said before, I was looking at it from a
7 perspective that this discussion -- it was not known that this
8 discussion was going to be happening in executive session.

9 It's one thing to be having a department head review
10 or any employee review and salary comes up during that
11 discussion. I think it's an entirely different thing when you
12 know that a wage study or looking at somebody's salary is
13 specifically going to be talked about before that review is
14 done. Those are two distinctly different things in my mind.
15 If there was notice beforehand that this was in fact going to
16 be talked about in executive session, I do not believe that's
17 proper, and I will second Mrs. Hoffman's motion.

18 CHAIRWOMAN SOVELL: We have a motion and we have a
19 second. All of those in favor of that motion, signify by
20 saying "aye."

21 MR. HOFFMAN: Aye.

22 MS. HOFFMAN: Aye.

23 MR. SMITH: Aye.

24 CHAIRWOMAN SOVELL: All those opposed.

25 MR. RUSSELL: Aye.

1 CHAIRWOMAN SOVELL: Thank you. All those opposed, and
2 I am going to vote -- I am going to vote in opposition. And
3 maybe we should do a roll call on this vote because we have a
4 split here. I am going to -- I'll have you call the roll call
5 or take a vote.

6 MR. BLAIR: Austin Hoffman.

7 MR. HOFFMAN: I vote in favor of finding a violation.

8 MR. BLAIR: Katelynn Hoffman.

9 MS. HOFFMAN: I vote in favor of finding a violation.

10 MR. BLAIR: Lance Russell.

11 MR. RUSSELL: Aye.

12 MR. BLAIR: Michael Smith.

13 MR. SMITH: I was really torn, but I think the
14 statements made by both Mr. Hoffman and Mrs. Hoffman are
15 compelling. I think the notice that was made through the
16 compensation exception request in the memo that was drafted and
17 the notice does it for me as well, I think that's when Mr.
18 Hoffman articulated it, and for that reason, I vote aye.

19 MR. BLAIR: Mrs. Sovell.

20 CHAIRWOMAN SOVELL: I vote nay. With that, motion
21 passes on issue number two. Issue number three was whether the
22 board violated SDCL Chapter 1-25 by taking action on a
23 non-agenda item during the November 7, 2023, commission
24 meeting. And this one was directly related to that vote on the
25 highway superintendent's salary, I apologize, it was a vote on

1 salary and I don't want to misstate the record. Do we need any
2 further discussion on number three? If not, is someone
3 inclined to make a motion on that subsection?

4 MR. SMITH: I will make a motion that there was a
5 violation here, that there was action take on a non-agenda item
6 without notice, without proper notice.

7 MR. HOFFMAN: I will second that.

8 CHAIRWOMAN SOVELL: We have a motion, we have a
9 second. All those in favor, signify by saying "aye."

10 (Motion passed unanimously.)

11 CHAIRWOMAN SOVELL: I vote aye as well; so motion
12 passes by unanimous vote that there was in fact a violation
13 with respect to the subsection 3 of the legal issues presented
14 in the complaint. So Mr. Blair will draft very organized
15 findings to address all three of these subsections, and the
16 appropriate document will be publicly made available for the
17 violations that have occurred. Thank you all for your time and
18 presentations here. Shall we take a 10-minute break?
19 10-minute break, everybody can grab the new files and grab a
20 cup of coffee or water.

21 (Whereupon, the proceedings were concluded.)

22

23

24

25

C E R T I F I C A T E

STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF HUGHES)

I, Carla A. Bachand, RMR, CRR, Freelance Court
Reporter for the State of South Dakota, residing in Pierre,
South Dakota, do hereby certify:

That I was duly authorized to and did report the
proceedings in the above-entitled cause;

I further certify that the foregoing pages of this
transcript represents a true and accurate transcription of my
stenotype notes.

Dated this 5th day of December 2024.

/s/ Carla A. Bachand
Carla A. Bachand, RMR, CRR
Notary Public
My commission expires: June 10, 2030