

STATE OF SOUTH DAKOTA



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**MARTY J. JACKLEY**  
ATTORNEY GENERAL

**BRENT K. KEMPEMA**  
CHIEF DEPUTY

April 21, 2025

Gordon Phillips  
306 Mine St  
Lead, SD 57754

Timothy R. Johns  
Johns & Kosel, Prof. LLC  
203 W Main Street  
Lead, SD 57754

Re: In the Matter of Open Meeting Complaint 2024-09, City of Lead Commission –  
Lawrence County

Dear Mr. Phillips & Mr. Johns,

Enclosed please find proposed Findings of Fact and Conclusions of Law regarding the above referenced matter. You may submit objections to the proposed Findings and Conclusions, or you may propose alternate Findings and Conclusions, no later than the close of business on April 29<sup>th</sup>. Please submit any objections or proposed Findings or Conclusions to me via email ([steven.blair@state.sd.us](mailto:steven.blair@state.sd.us)) or at the address indicated above. Any objections or proposed Findings or Conclusions will be considered at the time the Commission takes final action to adopt Findings and Conclusions in this matter.

The Commission will be holding a meeting on May 2, 2025, and will consider the findings and conclusions. A Notice of Hearing, and proposed agenda, regarding the May 2 meeting are also enclosed. As you can see from the agenda, consideration of the proposed findings and conclusions will begin at 2:00 p.m. mountain time or as soon thereafter as matters may be heard. You are not required to be present for consideration of proposed Findings and Conclusions.

April 21, 2025

Re: In the Matter of Open Meeting Complaint 2024-09, City of Lead Commission – Lawrence County

Page 2

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'SRB', followed by a long horizontal flourish.

Steven R. Blair

Assistant Attorney General

SRB/jm

Enclosure

STATE OF SOUTH DAKOTA  
OPEN MEETINGS COMMISSION

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IN THE MATTER OF OPEN	)	OMC 2024-09
MEETINGS COMPLAINT AGAINST	)	
CITY OF LEAD COMMISSION –	)	NOTICE OF HEARING
LAWRENCE COUNTY	)	

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TO: Gordon Phillips, 306 Mine Street, Lead, South Dakota 57754; and Timothy R Johns, Johns & Kosel, Prof. LLC, 203 W Main Street, Lead, South Dakota 57754;

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, at The Lodge at Deadwood, Cody Room, 100 Pine Crest Drive, Deadwood, South Dakota, on Friday, May 2, 2025. You are not required to be present, however, if you would like to be present the hearing will commence at 2:00 P.M. mountain time and proceed in the order noted in the attached agenda.

Dated this 21st day of April 2025.



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

STATE OF SOUTH DAKOTA  
OPEN MEETINGS COMMISSION

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IN THE MATTER OF OPEN	)	OMC 2024-09
MEETINGS COMPLAINT AGAINST	)	
CITY OF LEAD COMMISSION –	)	CERTIFICATE OF SERVICE
LAWRENCE COUNTY	)	
	)	

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The undersigned hereby certifies that a true and correct copy of the proposed Findings of Fact, Conclusions of Law, & Decision and Notice of Hearing in the above-captioned matter, were served by United States mail, first class, postage prepaid upon Gordon Phillips, 306 Mine Street, Lead, South Dakota 57754; and Timothy R Johns, Johns & Kosel, Prof. LLC, 203 W Main Street, Lead, South Dakota 57754, on this 21st day of April 2025.



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

SOUTH DAKOTA OPEN MEETINGS COMMISSION

**AGENDA**

THE LODGE AT DEADWOOD  
CODY ROOM  
100 PINE CREST DR.  
DEADWOOD, SOUTH DAKOTA

May 2, 2025  
2:00 p.m. Mountain Time

1. Approval of the Agenda
2. Public Comment period as per SDCL 1-25-1
3. Approval of the Minutes of February 24, 2025, meetings
4. Consideration of Findings of Fact and Conclusions of Law
  - A. In the Matter of Open Meeting Complaint 2021-02 Bennett County Board of Commissioners
  - B. In the Matter of Open Meeting Complaint 2024-01 Martin City Council
  - C. In the Matter of Open Meeting Complaint 2024-02 Bennett County Board of County Commissioners
  - D. In the Matter of Open Meeting Complaint 2024-03 Piedmont Board of Trustees
  - E. In the Matter of Open Meeting Complaint 2024-04 Lincoln County Commission
  - F. In the Matter of Open Meeting Complaint 2024-05 North Sioux City City Council
  - G. In the Matter of Open Meeting Complaint 2024-06 Carlyle Township
  - H. In the Matter of Open Meeting Complaint 2024-07 Pennington County Board of Commissioners
  - I. In the Matter of Open Meeting Complaint 2024-08 Sturgis City Council
  - J. In the Matter of Open Meeting Complaint 2024-09 City of Lead Commission
  - K. In the Matter of Open Meeting Complaint 2024-10 Green Valley Sanitary District
  - L. In the Matter of Open Meeting Complaint 2024-11 Charles Mix County Commission

*M. In the Matter of Open Meeting Complaint 2024-12 Tripp City Council*

5. Discussion regarding 2026 Legislative Session
6. Discussion regarding future meeting.

All items are scheduled for 2:00 p.m. Mountain Time. Scheduled items may be delayed or moved to a later agenda item at the discretion of the OMC.

**Notice is given to individuals with disabilities that this meeting is being held in a physically accessible location. Please notify the Attorney General's Office, 605-773-3215, at least 48 hours before the meeting if you have a disability for which special arrangements must be made.**

# **SOUTH DAKOTA OPEN MEETINGS COMMISSION HEARING**

**May 2, 2025  
2:00 p.m. Mountain Time**

**NOTE:** The following information is pertinent only if you plan to speak to the Board during the public comment period or are participating in an agenda item. If interested in listening, please use the meeting livestream available at <https://www.sd.net/>.

**Following are two options to participate remotely in the “Public Comment” portion of the Board agenda.**

**If you are a participant in a specific scheduled agenda item, please choose one of the following options.** (Agenda items may be delayed by prior agenda items)

**Option 1.** Use Microsoft Teams - Join on your computer or mobile app  
(requires internet connection)

Click on or copy and paste the following link into your web browser to connect to the meeting. **Please keep your microphone muted unless addressing the board.**

Click on:

**[Join the meeting now](#)**

**Or Copy and paste following into web browser:**

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_ODU0YTRhYjUtNDNlNi00MjRhLWFIYjUtMTI4NjliZjk0MjVm%40thread.v2/0?context=%7b%22Tid%22%3a%2270af547c-69ab-416d-b4a6-543b5ce52b99%22%2c%22Oid%22%3a%22877576c2-c895-4a49-be97-f04ffea1680%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_ODU0YTRhYjUtNDNlNi00MjRhLWFIYjUtMTI4NjliZjk0MjVm%40thread.v2/0?context=%7b%22Tid%22%3a%2270af547c-69ab-416d-b4a6-543b5ce52b99%22%2c%22Oid%22%3a%22877576c2-c895-4a49-be97-f04ffea1680%22%7d)

**Or in web browser go to:**

<https://www.microsoft.com/microsoft-teams/join-a-meeting> and enter

**Meeting ID:** 261 494 428 545 5

**Passcode:** uK6BK3Az

**Option 2.** Call in (audio only)

**Please keep your phone muted unless addressing the board. Use “Mute” button or \*6**

**Phone:** 605-679-7263

**Phone Conference ID:** 440 472 490#

STATE OF SOUTH DAKOTA  
OPEN MEETINGS COMMISSION

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IN THE MATTER OF OPEN	)	OMC 2024-09
MEETINGS COMPLAINT AGAINST	)	
CITY OF LEAD CITY COMMISSION	)	FINDINGS OF FACT,
– LAWRENCE COUNTY	)	CONCLUSIONS OF LAW, &
	)	DECSISION

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The above captioned matter was heard before the South Dakota Open Meetings Commission (Commission) on November 25, 2024. Complainant, Gordon Phillips, appeared personally. The City of Lead City Commission appeared through counsel, Tim Johns. 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 Lead is a Second-Class municipality located in Lawrence County, South Dakota, and has been organized and operated according to applicable provisions of South Dakota Codified Law.

2. The Commission further takes notice that the City Commission for the City of Lead is the public body elected pursuant to applicable provisions of state law to govern the City of Lead.

3. On January 24, 2024, Gordon Phillips emailed Lead City Commissioner Rob Carr to inquire when the City Commission authorized a city



employee to lobby in Pierre for a bill to provide funding for a new community center in Lead.

4. Commissioner Carr responded by saying “I do believe we authorized [the employee] to go in support of the bill. Because [the bill] was dropping between meetings ... they polled us via email. “

5. On May 8, 2024, Mr. Phillips submitted an open meetings violation to the Lawrence County State’s Attorney. The complaint alleged, in part, that the email poll referenced above constituted official action by the City Commission to approve the expenditure of public funds outside an official public meeting.

6. SDCL 1-25-12(3) defines an official meeting of a public body to be “any meeting of a quorum of a public body at which official business of the public body is discussed or decided, or public policy is formulated, whether in person or by means of teleconference.”

7. A “teleconference” is defined by SDCL 1-25-12(4) as “information exchanged by any audio, video, or electronic medium, including the internet.”

8. SDCL 1-25-1 requires official meetings of public bodies to be open to the public except under certain circumstances. SDCL 1-25-1.1 requires that proper notice be given of all official meetings of all local government public bodies.

9. The Lawrence County State’s Attorney’s Office forwarded the complaint to the Commission pursuant to SDCL 1-25-6(3). The State’s Attorney’s Office indicated that there were open questions concerning the

complaint, and it was unable to conclude whether the Lead City Commission had violated SDCL 1-25-1.

10. In its written response, the City Commission indicated that the City Administrator authorized two employees to testify before the Legislature in support of the bill brought concerning the Lead Community Center. According to the City Commission's response, at no time did it authorize payment of public funds to the two City employees to represent the City at the legislative hearing.

11. The City Commission's response included a written statement from the City Administrator indicating that he authorized un-paid leave for the two employees to attend the bill hearing in Pierre and advised them that the City would not reimburse any travel expenses. According to the City Administrator, he did email the City Commission but only received a response from the Mayor.

12. Before the Commission, the City Commission asserted that the email poll from the City Administrator was never answered by any of the Commissioners except the Mayor. The City Commission reaffirmed that it was the City Administrator, acting under his authority, who authorized the employees to travel to Pierre and testify before the Legislature. The Commission also stated that no public funds were expended by the City for the employees to testify before the Legislature, the employees were allowed to attend using their personal leave and were denied any travel expenditure reimbursement.

13. 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 City of Lead City Commission, as the governing body of Lead South Dakota, is a public body subject to the open meetings 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 clearly contemplates and requires that official action of a public body may only be taken at a properly noticed official meeting of the public 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.

3. An email discussion that involves a quorum of a public body constitutes a teleconference and qualifies as an official meeting of that body.

4. The Commission, however, feels that it is unreasonable to hold public bodies responsible for every email the members of the public body may receive. Many of those emails are sent outside of the control of the members of the public body. The simple receipt of an email, addressed to a quorum of a public body, that discusses the official business or public policy of the body is not a per se violation of the state open meetings laws.

5. This Commission has previously reprimanded public bodies for taking official action through email communication outside of a public meeting. *See in re City of Canton*, OMC # 17-04. In the *City of Canton* matter, an email

discussion among the Canton City Commission resulted in the expenditure of public funds.

6. In this matter, an email was sent to a quorum of the Lead City Commission by the City Administrator. The email sought a discussion by the City Commission concerning the employees' request to attend the legislative hearing. The email was sent with the intent to obtain a response from the City Commissioners, however, only the Mayor responded.

7. It is clear, though, that no discussion of official business or public policy amongst a quorum of the Lead City Commission took place through the email sent by the City Administrator. There were no responses received from the City Commissioners. Further, it is clear that no public funds were expended or authorized by the Lead City Commission concerning this matter. All action authorizing the employees to attend the legislative hearing was carried out by the City Administrator.

8. Because no discussion occurred in response to the email from the City Administrator, and no official action was taken by the City Commission, The Commission concludes the Lead City Commission did not violate the state open meetings laws in this matter.

9. The Commission does note, however, that if responses to the City Administrator's email had been received the result of this decision would have been different. Official action is not required to find a violation of the open meetings laws, discussion of official business or public policy outside of an official meeting would be a violation of the open meetings laws.

10. The Commission also notes the public bodies do maintain authority and control over their staff. The public body is responsible for training their staff concerning the state open meetings laws and in establishing procedures that comply with the open meetings laws. Public bodies should ensure that their staff do not attempt to engage a quorum of the public body in a discussion of official business or public policy outside of an official meeting.

11. 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 City of Lead City 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 **Sovell (Chair), A. Hoffman, K. Hoffman, Russell, & Smith.**

Dated this \_\_\_\_\_ day of May.

SOUTH DAKOTA OPEN MEETINGS COMMISSION

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Emily Sovell, Chair