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TO: Beverly Katz, Assistant Attorney General
FR: Gerry Kaufman
DATE: April 27, 2026
RE: Draft Conclusions - Green Valley Sanitary District

Dear Assistant Attorney General Katz:

I wanted to share with you my thoughts regarding the draft of the proposed Green Valley Sanitary District Conclusions which is on the Commission's agenda for today. I chose to email it to you instead of commenting on it during the Public Comment time during the meeting, for even though I do plan on listening in on the meeting, I didn't think it would be appropriate for me to voice my concern at that time. My concern revolves around language in Conclusion #4 and Conclusion #6.

Conclusion #4 states in part "However, when the motion is made to convene an executive session, the motion must clearly state the specific purpose or legal basis for doing so, as authorized under applicable state statute or federal law." (Emphasis added).

Conclusion #6 states "The Commission concludes that the Board of Trustees did violate the state open meetings laws when Green Valley Sanitary District Board of Trustees went into executive session without stating an authorized specific purpose or legal basis for doing so in violation of SDCL 1-25-1 and 1-25-2." (Emphasis added).

I respectfully submit that the wording in both conclusions, i.e., the phrases "must clearly state the specific purpose or legal basis" and "stating an authorized specific purpose or legal basis" could very easily result in confusion as to what is required in the motion.

As stated in Conclusion #2, SDCL 1-25-1 states "An official meeting of a public body is open to the public **unless a specific law is cited** by the public body to close the official meeting to the public." (Emphasis added).

Since SDCL 1-25-1 was amended in 2010 to require meetings are open to the public unless a specific law is cited to close the meeting to the public, I always understood that to mean the governing board had to state the specific law in the motion to go into executive session, and not state just an authorized specific purpose. SDCL 1-25-2(1) is a specific law. SDCL 1-25-2(1) allows a governing board to go into executive session for the specified purpose of "discussing the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee." SDCL 1-25-1 does not say the motion

must refer to a “specific purpose or legal basis” for going into executive session -- it says the motion must cite the specific law which authorizes the executive session.

I would submit that my interpretation is supported by the Attorney General’s *Conducting the Public’s Business in Public -- A guide to South Dakota’s Open Meetings Laws* (Revised Dec. 31, 2025).

Q: WHAT IS THE PROPER PROCEDURE FOR EXECUTIVE SESSIONS?

A: Motions for executive sessions must refer to the specific state or federal law allowing for the executive session i.e. "pursuant to SDCL 1-25- 2(3)." Also, best practice to avoid public confusion would be that public bodies explain the reason for going into executive session. For example, the motion might state "motion to go into executive session pursuant to SDCL 1-25-2(1) for the purposes of discussing a personnel matter," or “motion to go into executive session pursuant to SDCL 1-25-2(3) for the purposes of consulting with legal counsel.” (Emphasis added).

In order to avoid possible (and what I think to be likely) confusion and/or misunderstanding as to what SDCL 1-25-1 requires in the motion for a governing board to go into executive session, I would respectfully recommend that the phrases “specific purpose or legal basis” in Conclusion #4, and “authorized specific purpose or legal basis” in Conclusion #6, be changed to “the specific law.”

Respectfully,

Gerry Kaufman