

SOUTH DAKOTA OPEN MEETINGS COMMISSION

MINUTES OF MEETING

Matthews Training Center, Foss Bldg, Pierre, SD

July 28, 2025

Members participating: Emily Sovell, Sully County State's Attorney (Chair); Katelynn Hoffman, Turner County State's Attorney (Co-Chair); Austin Hoffman, McPherson County State's Attorney; Michael Smith, Clay County State's Attorney (appeared by Teams); and Lance Russell, Fall River/Oglala Lakota County State's Attorney. Steve Blair and Melissa Neyhart, Office of the Attorney General, assisted the Commission.

Chair Sovell called the meeting to order at approximately 10:00 a.m. Mr. Russell moved to approve the proposed agenda; Mr. Hoffman seconded. A voice vote was held; the agenda was approved by unanimous vote.

A time was provided for public comment as required by SDCL 1-25-1; no member of the public provided comment to the Commission.

The following is a summary (not verbatim) of the matters discussed.

May 2, 2025 Minutes

Mr. Hoffman moved to approve the draft minutes of the May 2, 2025, meeting. Mr. Russell seconded. A voice vote was held; the minutes were approved by unanimous vote.

In the Matter of Open Meeting Complaint 25-01, Central City Board of Trustees

Ms. Christle Beukens appeared as the Complainant. Mr. Kellen Willert appeared as counsel on behalf of the Central City Board of Trustees.

Ms. Beukens stated that government should be transparent to the residents it serves. At different times over her nineteen-year career as realtor she has attended many county commission and P and Z meetings and has a knowledge base on how meetings should be conducted. Ms. Beukens is concerned that the Central City Board of Trustees is not doing it correctly. She attributed that to the finance officer not doing her job correctly because the finance officer thought the rules changed so she didn't need to post the agenda and there was a lack of supervision of her job. Ms. Beukens submitted a letter to the Central City Board of Trustees, which she included with her complaint. She felt that after submitting her letter, the Central City Board of Trustees started posting the agenda until the September 2024 special budget meeting.

Ms. Beukens alleged that the September 23, 2024, special budget meeting violated the open meeting rule as the Central City Board of Trustees did not post an agenda. She asserted the only reason they did not vote on the budget was due to her interrupting the meeting, and it was the Central City Board of Trustees' intent to vote at that meeting. Ms. Beukens pointed out that Mr. Willert indicated in the Central City Board of Trustees' rebuttal that it is okay since they did not vote in that meeting.

Ms. Beukens stated that the Central City Board of Trustees claimed that historically they never posted the agenda, and she believed that to be blatantly incorrect. She pointed out that, in the almost thirty years that Ms. Beukens has lived there, the agenda was posted and the previous board president made sure the agenda was posted. Ms. Beukens personally read the agenda and minutes.

She does not understand how the Central City Board of Trustees could have served for so long, some twenty-five years, and they do not understand that they must post the agenda. Ms. Beukens believed that to be ignorance and not a good defense of the law, and it troubled her.

Ms. Beukens wished to bank the rest of her presentation time.

Mr. Willert relied on the Central City Board of Trustees written response. He wanted to repoint out Exhibit A and Exhibit C mentioned in their response were not properly executed, therefore, not properly before this body for consideration. Mr. Willert also objected to the multiple unsworn hearsay statements or comments made in those exhibits.

Mr. Willert stated that in relation to the September 23, 2024, meeting, as they indicated in their response, the Central City Board of Trustees agreed with Ms. Beukens' assertion that after the issue was raised, they adjourned without acting. Mr. Willert questioned what else could they or should they have done at that point. He submitted that adjourning without acting is the best thing they could have done under those circumstances and does not warrant a finding of a violation.

In terms of historically posting notices, Mr. Willard pointed out that the Central City Board of Trustees commented on that in one of the affidavits submitted. He felt it is an opportunity to do better. Mr. Willard submitted that the Central City Board of Trustees respectfully and will humbly respect the decision of the Open Meetings Commission in this matter. He asserted that the issue was fixed prior to the filings of Ms. Beukens. Mr. Willard pointed out that SDCL 1-25-1.1 only requires of an agenda to have the date, time and location posted. Mr. Willard stated that Central City is a small-town just like we have across the state and all the meetings are at the same place. Mr. Willert submitted the

day, time and location were adequately provided to the public ahead of the meeting.

Mr. Willard stated that issue two that they briefed discussed public comment. He asserted that in Ms. Beukens' second complaint she admitted that public comment is normally provided. Mr. Willard pointed out that the Central City Board of Trustees' agenda has an agenda item called "visitors" and that the body welcomed public comment on every single agenda item. He pointed out that the Central City Board of Trustees is one of those small-town bodies that some people show up to and even if they're not in the body they like to voice their opinion on each agenda item. He respectfully represented that the Central City Board of Trustees did more than what was required in terms of providing public comment.

Mr. Willard stated that the last issue they briefed is issue three in terms of routinely holding private meetings without following the rules and requirements of an executive session. He asserted that the affidavits filed indicated the trustees have not held an executive session in recent memory. Mr. Willard referred to Exhibit C1, and he believed the other affidavits pointed that out as well.

Mr. Willard indicated that it would be difficult to defend against the allegation because the complainant does not allege that town business was discussed or that any action was taken. He asserted that the trustees could meet outside the executive session requirements in SDCL 1-25-1, which he pointed out in the response. Mr. Willard submitted that even if they were in the room for a few minutes after the meeting talking it was not to discuss city business, so there was no violation. He welcomed questions from the Commission.

Chair Sovell indicated that the Commission may have additional questions after the evidentiary portion so if Mr. Willard is ceasing with oral presentation rebuttal may be presented.

Ms. Beukens referred to two agendas that she included in the complaint regarding the agenda being posted. She pointed out the location is not indicated on the agendas whatsoever. Ms. Beukens believed one can assume it is at the building it is posted.

Ms. Beukens stated that she was at the November meeting and the Central City Board of Trustees did not ask for public comment. She disagreed with Central City Board of Trustees' assertion that time was provided for public comment.

Ms. Beukens believed that, because it is a small-town body, the Central City Board of Trustees thinks they cannot follow the rules.

Ms. Beukens questioned, as far as the executive session, how she is supposed to prove that the Central City Board of Trustees talked about city business when you are supposed to be out of the building when they are meeting for executive session whether it is called or not.

Ms. Beukens indicated that she gets nothing positive from filing the complaint. She alleged to have received grief and hostility, her properties vandalized, and her friends harassed and intimidated. Ms. Beukens stated the coincidence concerned and troubled her.

Ms. Beukens pointed out that there had been some good things that came out of her complaint. She referred to items that have not been handled by the board. Such as, the ordinances and resolutions being organized into a booklet. Ms. Beukens felt that was a win because so far nothing was organized. She stated that the Central City Board of Trustees discovered an election schedule. Ms. Beukens indicated that she had asked for years who was up for re-election every year and she was told "I don't know." Ms. Beukens pointed out that the election schedule was found suddenly, and she felt that was a win. Ms. Beukens stated that the Central City Board of Trustees received advice that they better audit their books. She felt that was a win. Ms. Beukens believed the biggest win was the Central City Board of Trustees hiring an attorney to give them advice on legal procedures – what to do better. To her that was a win. Ms. Beukens hoped that the Central City Board of Trustees continued to do that because they need advice.

Ms. Beukens indicated that the main reason she was there was a violation of the open meeting law. She stated that she gave the Central City Board of Trustees a lot of opportunities to do things correctly and to handle things in a quiet, neighborly way but the Central City Board of Trustees did not heed her warning. Because the Central City Board of Trustees are a small board, she felt they did not think they needed to follow the rules. She hoped the Central City Board of Trustees realized now that they need to follow the rules.

Ms. Beukens respectfully requested that the Commission find the Central City Board of Trustees in violation of at least that state law. She welcomed questions from the Commission.

Chair Sovell clarified that the initial complaint that came in October was not notarized and subsequently Ms. Beukens submitted a notarized complaint in November. Ms. Beukens confirmed. Chair Sovell confirmed with Mr. Willard that he received the notarized complaint in November. Mr. Willard stated that he also received a third one from the State's Attorney that was attached as Exhibit C but not part of the initial packet. Chair Sovell thanked Mr. Willard for the clarification.

Chair Sovell closed out the oral presentation portion. The Commission went into deliberations.

Mr. Russell commented that he was impressed on how the State's Attorney outlined the complaints and conducted the investigation. He further commented that he did not know how many state's attorneys would have the time to do such a good job of detailing what had transpired. Mr. Russell concluded that there was a violation of SDCL 1-25-1.1 and SDCL 1-25-1. He moved to find that there was a violation.

Mr. Hoffman pointed out that the State's Attorney breaks it down by the three issues and questioned if the Commission wanted to address each issue separately to keep them clear. Chair Sovell agreed.

Chair Sovell stated the first issue was the Central City Board of Trustees' failure to post the agendas. Chair Sovell believed they acknowledged that violation. Chair Sovell further stated the Central City Board of Trustees submitted that they did not initiate a violation regarding the September 2024 special budget meeting because no formal action was taken during the meeting. Chair Sovell found that is not how the statute reads. Chair Sovell requested further comments on the violation for failure to post the agenda.

Ms. Hoffman agreed. She pointed out the Central City Board of Trustees convened the meeting but did not believe there was a requirement that any action be taken. Ms. Hoffman found the Central City Board of Trustees did not post the agenda properly.

Chair Sovell questioned Mr. Hoffman on whether he believed they should vote on the subparts or was he requesting discussion for the findings of fact on each side part. Mr. Hoffman suggested that the Commission address each issue separately. Chair Sovell agreed.

Chair Sovell addressed the Central Board of Trustees' failure to post the agenda. She noted that there was a failure in the initial motion with discussion that the Commission is going into the subpart motions. Chair Sovell asked for a motion with respect to the Central Board of Trustees' failure to post the agenda. Ms. Hoffman made a motion; Mr. Hoffman seconded for issue one. A voice vote was held; the motion was approved by unanimous vote. Motion carried.

Mr. Hoffman added that as a state's attorney he has ran into that issue before, but fortunately they caught it. He believed the Central City Board of Trustees did the right thing under the circumstances but technically it was a violation. Mr. Hoffman was happy to see that Central Board of Trustees adjourned the meeting and did not move forward with it. Mr. Russell agreed. Chair Sovell

requested further comments on issue one. There being none, Chair Sovell moved to subpart two on public comment.

Chair Sovell pointed out that the Central City Board of Trustees admitted there was nothing stating there would be public comment, and a call for public comment was not made based on what the Commission heard. Chair Sovell requested a motion with respect to the failure to have the public comment was a violation of the meeting rules. Mr. Hoffman expressed that this issue is a little gray. He pointed out that there was not a public comment portion on the two agendas. Mr. Hoffman indicated that SDCL 1-25-1 states that a public body shall reserve but does not necessarily mean it has to be specifically on the agenda although he felt it should be. Mr. Hoffman stated that one person expressed it was offered and the other person expressed it was not offered.

Chair Sovell indicated that it is difficult sometimes to balance between what is best practices and what is technically a violation of the laws provided. While she understood in the more rural areas with the boards that are smaller and have less consistent advice, Chair Sovell encouraged them to insert public comment in all future agendas. Chair Sovell did not believe historically the Commission made findings or rulings that mandated insertion. Mr. Blair did not recall any Commission decisions dealing specifically with that.

Mr. Hoffman made the motion that the Commission find no violation because they do not have enough facts to determine whether it was or was not a violation. Chair Sovell requested comments or questions.

Ms. Hoffman commented that both parties admitted that public comment is offered. She agreed that statute does not necessarily state that it shall be listed in the agenda, but felt it is best practice to do so. Based on that, Ms. Hoffman seconded the motion. A roll call vote was held: Ms. Hoffman, Mr. Hoffman, Mr. Smith and Chair Sovell all voted aye; Mr. Russell voted nay. Motion carried.

Mr. Russell believed that the letter of the law may very well lend itself to that interpretation, but the statute states the public body shall reserve at every regularly scheduled official meeting a period for public comment. He commented that the statute may not state that but there is a very strong implication that public comment would be reserved on the agenda. Chair Sovell did not disagree and commented that this should be addressed with legislation in the future for more clarity.

Chair Sovell opened for discussion the third subpart of the complaint. She understood the concern was meetings are being treated as executive session although not formally going into executive session but, rather, quorums remaining post meeting for discussions. Chair Sovell understood that if no one

is there to hear or see what is happening it is hard to determine whether official business was discussed.

Mr. Hoffman questioned if during this time the public is asked to leave or is this after the meeting has been adjourned and ultimately the public would have the ability to stay. Ms. Beukens advised that it is usually after the meeting is adjourned but one time she remained in her car after the meeting, and the Central Board of Trustees remained in the building for a good twenty minutes. Ms. Beukens indicated that it is a pattern with the Central City Board of Trustees. Mr. Hoffman questioned whether the public was asked to leave. Ms. Beukens stated that when the meeting is adjourned it is uncomfortable to stay seated in city hall. Mr. Willard interjected that the various affidavits provided indicate that no one recalls entering executive session on that date, and one of the affidavits states that prior to March 15 of this year they do not recall entering executive session. The Central City Board of Trustees' position is the door remains unlocked until they leave, and no one was asked to leave. Mr. Willard stated that the Central City Board of Trustees hired him to help them through issues and get some better practices.

Chair Sovell stated that she worked with a number of rural boards and commissions and has run into the issue of casual gatherings. She felt at times it probably does enter the realm of what are we going to do for our public body and sometimes it does not. Chair Sovell commented that it is difficult to say there is a violation for executive session when there was not an executive session entered. She stated that public bodies should be following the law.

Mr. Russell believed there was no evidence that town business was discussed. Chair Sovell stated that Mr. Beukens was not present to determine if official business was discussed.

Mr. Smith questioned Mr. Blair if there was a standard of proof in these proceedings. Mr. Blair indicated that there was not one set out in statute and the lightest burden would be preponderance of the evidence. He felt that the clear and convincing evidence standard is reserved for contested cases, which aren't necessarily full contested cases under the Administrative Procedures Act. Mr. Blair believed the appropriate burden would be preponderance of the evidence.

Mr. Smith felt the Commission cannot prove to that standard a violation. Mr. Smith made a motion that there was not a violation as to issue three; Mr. Russell seconded. A voice vote was held; the motion was approved by unanimous vote. Motion carried

In the Matter of Open Meeting Complaint 25-02, Saddleback Road District

Complainant Ms. Dachia Arritola did not appear. Mr. Robert Hummel, Mr. Dale M. Ruzicka and Mr. Matthew Christensen (via Teams) appeared on behalf of the Saddleback Road District Board of Trustees.

Mr. Blair believed he had a phone conversation with Ms. Arritola several weeks ago but did not recall if she advised whether she would attend in person or by Teams. Chair Sovell stated that nothing mandates the complainant must present anything in addition to the written submission. Chair Sovell confirmed Ms. Arritola's complaint was notarized and stated the Commission would rely on what Ms. Arritola submitted.

Mr. Hummel represented that the Saddleback Road District has made efforts to be in full compliance as outlined in their response.

Mr. Hoffman stated that he was unfamiliar with the reason and necessity for a road district in Custer County. Mr. Hummel and Mr. Ruzicka explained the purpose of a road district and the process of applying for a road district.

Mr. Hummel asserted that the only meeting required to be held is an annual meeting and 95% of the other meetings they held were ministerial to discuss road maintenance. He stated the Saddleback Road District's budget and election of trustees is done at the annual meeting. Mr. Hummel indicated that occasionally the Saddleback Road District holds a special meeting to communicate with the landowners who then vote. Mr. Hoffman inquired if the Saddleback Road District provides notice of their special meetings.

Mr. Hummel indicated the Saddleback Road District notices are posted on a posting board on their right-of-way. Mr. Ruzicka stated that the Saddleback Road District posts the annual meetings on their placard and an email is sent out with the agenda.

Mr. Ruzicka commented that Ms. Arritola employed the same practices when she was board president which she outlined in her complaint. He advised that the Saddleback Road District is working to update bylaws and get practices implemented that allow them to do things statutorily in the future.

Mr. Hummel asserted that it was the Saddleback Road District's intent to communicate with the landowners and never to cover up anything. He commented that the Saddleback Road District keeps the roads in very good and safe condition and the trustees are efficient with the use of the money it has.

Mr. Ruzicka communicated that it is difficult to plan and have a meeting every time there is a rain fall. Mr. Hummel stated that it hard to post the notice twenty-four hours in advance when you know the rain is coming and then

there is a washout or three feet of snow. Mr. Ruzicka commented that the Saddleback Road District needs to make sure emergency personnel have use of the road. Mr. Hummel indicated that much of what Saddleback Road District does is reactionary based on weather or events.

Mr. Christensen commented that the trustees understand their oath of office and that they use the continuous improvement process to make sure they are complying. He further commented that the Saddleback Road District does not conduct business behind closed doors. Mr. Christensen stated that while things may not have been done correctly in the past the Saddleback Road District is taking steps to improve the process and to ensure they are meeting all the compliance requirements of the government.

Mr. Ruzicka asserted that complainant is a party of four individuals. He commented that the individuals attended the annual meeting and requested the Saddleback Road District change its boundaries, and the residents voted that down. Mr. Ruzicka stated that complainant then petitioned the county commissioners to dissolve the Saddleback Road District so that her group could form their own road district, and the county turned them down. He advised that complainant then requested the Attorney General's opinion on the matter, who stated that a new road district cannot be formed within the boundaries of an existing road district.

Mr. Russell believed the issue is the Saddleback Road District comes under the purview of the open meetings law because it is a taxing entity created by statute. Mr. Russell stated that Ms. Arritola made allegations that last year the Saddleback Road District did not have agendas for meetings and things of that nature. Mr. Ruzicka indicated he could provide the agenda that was emailed to everyone and posted on the placard. Mr. Russell questioned if the agenda was for the May meeting. Mr. Ruzicka confirmed. Mr. Russell indicated that Ms. Arritola outlined specific meetings. Mr. Hummel asserted that some of the meetings Ms. Arritola referred to were ministerial regarding previously agreed upon activities for the road district and not to decide policy. Mr. Ruzicka indicated the August meeting that Ms. Arritola's referred to was the county commission meeting where she petitioned to establish a new road district within the boundaries of the Saddleback Road District. Mr. Hummel and Mr. Ruzicka asserted that it was not the Saddleback Road District's meeting to notice. Mr. Ruzicka indicated that the September 7 date is when the trustees discussed hiring an attorney for a small claims suit filed by Ms. Arritola. Mr. Hummel asserted that under road district law the trustees can hire accountants and attorneys. Mr. Ruzicka believed that this type of discussion would not be appropriate during an open meeting as Ms. Arritola would be present during that discussion. Chair Sovell indicated that the law states notice needs to be provided when there are matters to be discussed in executive session. Mr. Hummel stated that an email was sent to everybody indicating that the Saddleback Road District would need to retain an attorney

because it was being sued in small claims court. Chair Sovell questioned if the Saddleback Road District posted an agenda for the meeting. Mr. Hummel indicated no and that they held the meeting as an executive session. Chair Sovell advised that the agenda should state that an executive session is being held. Chair Sovell stated that an agenda should also be posted if the board members are attending another meeting. Mr. Hummel shared that this is the type of information they later learned from the State's Attorney and that the Saddleback Road District's bylaws have been revised to fix this past issue.

Chair Sovell believed that there were technical violations of the open meeting laws. Ms. Hoffman felt the two items that the Commission should address are the commission meeting attended by a quorum of the trustees and the meeting regarding hiring legal counsel. Ms. Hoffman questioned if the complaint should be parsed out for voting purposes. Chair Sovell thought rather than parsing out due to the extended amount of material the Commission could find generally that there has been a history of violations throughout the duration, and the Saddleback Road District is taking steps to improve what has taken place. Ms. Hoffman thought it would be appropriate for the Commission to adopt some of the language that the Custer County State's Attorney had in her referral to the Commission.

Chair Sovell advised the Saddleback Road District to post notices going forward if state statutes read as such. Mr. Hummel questioned if it would be appropriate to place the placard at a public place by the mailboxes. Ms. Hoffman believed that would be appropriate if the Saddleback Road District designated where they are putting the agenda as their principal place of business with each agenda listing where the meeting will be held. Chair Sovell shared that she did not think the location of the placard was a violation as it properly posted and publicly available.

Mr. Hoffman felt that the Commission does not have decision-making authority over parts of the complaint. He pointed out that the agenda for the meeting to discuss hiring legal counsel should have been posted twenty-four hours in advance but that did not occur. Mr. Hoffman felt that the Saddleback Road District is on the right path but there are still things that could be improved.

Mr. Hummel noted some of the changes that the Saddleback Road District had made is that they codified the use of Robert's Rules of Order in their meetings. He stated that Saddleback Road District had some learning curves after they have tried to follow the open meeting laws.

Mr. Hoffman made a motion to find that there was a violation for improper notice of meeting to hire legal counsel; Mr. Russell seconded. A voice vote was held; the motion was approved by unanimous vote. Motion carried.

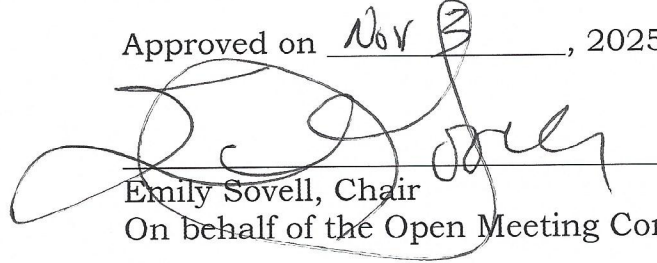
Discussion of future meetings

A discussion was held on scheduling the Commission's next meeting.

Adjournment

A motion to adjourn was made by Mr. Hoffman and seconded by Mr. Russell, at approximately 11:54 a.m. Roll call was made with all Commissioners voting aye, and the Commission adjourned.

Approved on Nov 3, 2025.


Emily Sovell, Chair
On behalf of the Open Meeting Commission