SOUTH DAKOTA OPEN MEETINGS COMMISSION

MINUTES OF MEETING
Matthews Training Center, Foss Building, Pierre, South Dakota

April 27, 2026

Members participating: Michael J. Smith, Clay County State's Attorney (Chair); Katelynn Hoffman, Turner County State's Attorney (Vice Chair); Austin Hoffman, McPherson County State's Attorney; Lance Russell (via Teams), Fall River/Oglala Lakota County State's Attorney; and Emily Sovell, Sully County State's Attorney. Beverly Katz and Melissa Neyhart, Office of the Attorney General, assisted the Commission.

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

No conflict of interest was raised by any of the Commission members.

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.**

November 3, 2025, Minutes

Mr. A. Hoffman moved to approve the draft minutes of the November 3, 2025, meeting; Ms. Sovell seconded. A voice vote was held; the minutes were approved by unanimous vote.

*In the Matter of Open Meeting Complaint 2025-03, Rapid City Area School District*

The Commission considered proposed Findings of Fact and Conclusions of Law drafted in regard to this matter. Ms. Sovell made a motion to approve the Findings of Fact and Conclusions of Law; Ms. K. Hoffman seconded the motion. A voice vote was held; the Findings of Fact and Conclusions of Law were unanimously approved. Motion carried.

*In the Matter of Open Meeting Complaint 2025-04, Green Valley Sanitary District*

Chair Smith noted that Attorney Gerald (Gerry) Kaufman provided the Attorney General's Office with a written statement the morning of the April 27, 2026, Commission meeting. The Commission members that were physically present

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at the meeting were provided with Mr. Kaufman's statement to review prior to the meeting.

Chair Smith provided Mr. Kaufman the opportunity to provide comments. Mr. Kaufman was not sure if he had any standing, so he did not present during the public comments period. Mr. Kaufman elected to provide comments. He stated that the language in Conclusion No. 4 regarding the motion must clearly state the specific purpose or legal basis authorized under the statute could cause some confusion as the Attorney General's brochure states that the motion should state the specific state or federal law.

Chair Smith asked if the Commission members had corrections to the Findings of Fact and Conclusions of Law.

Ms. Sovell did not disagree with Mr. Kaufman's comments, but she was uncertain regarding the standing issue. She indicated that she has been to several meetings over the years where there has been reference to reasons within the statute regarding an employee issue that complies with the statutes. Ms. Sovell believed it would need to be a case-by-case basis that the Commission addresses those to say whether it was articulated sufficiently. Ms. Sovell is okay with the language as proposed but noted that it is not mimicking the state law.

Mr. A. Hoffman was okay with the wording but understood Mr. Kaufman's concern. He suggested using the specific law wording instead of the specific purpose or legal basis or remove purpose and leave legal basis.

Chair Smith indicated that Mr. Kaufman's recommendation pursuant to his letter was to change it to say, "the specific law."

Ms. K. Hoffman pointed out that the language for purpose is coming from SDCL 1-25-2 where it states executive or closed meetings may be held for the sole purposes of and then it lays out the subsections.

Ms. Sovell made a motion to amend Conclusion No. 4 and Conclusion No. 6 to remove "specific purpose or" and just state "legal basis." Mr. A. Hoffman seconded the motion. Chair M. Smith requested further discussion.

Ms. K. Hoffman did not believe it was inaccurate and she understood why the motion and second were made as she believed it covered the statute.

Chair Smith again requested further discussion. Hearing none, a voice vote was held; the Findings of Fact and Conclusions of Law, as amended, were unanimously approved. Motion carried.

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Consideration of Procedure

Chair Smith discussed the amount of time allowed for presentations. He pointed out that agenda items 8(B)(C) and (D) contain stipulations that will be addressed when they get to that point.

*In the Matter of Open Meeting Complaint 2025-05, Town of Hermosa Town Board of Trustees*

Ms. Katz indicated that Complainant Ms. Vicki Henrichsen told Ms. Katz that she would be appearing remotely. Neither Ms. Henrichsen nor Mr. J. Scott James, counsel for Town of Hermosa, appeared at this time.

Chair Smith stated that in the past when the Commission knew people planned to attend it was standard practice for the Commission to move on to the next agenda item in anticipation of the parties running late or misunderstanding the meeting time. Chair Smith asked the Commission if anyone had an issue with moving to agenda item 8(B) and circling back to this agenda item. There being none, Chair Smith moved to the next agenda item.

*In the Matter of Open Meeting Complaint 2026-01 City of Gary City Council*

Ms. Rachel Hinsvark appeared (via Teams) as the Complainant. Mr. Reed Mahlke, counsel for City of Gary, did not appear.

Ms. Katz indicated that Mr. Mahlke offered a Stipulation and Agreement for Reprimand to handle this complaint. Ms. Katz read the signed Stipulation and Agreement and the proposed Order for Reprimand into the record. Ms. Katz indicated that Ms. Hinsvark wanted an opportunity to address the Commission.

Ms. Hinsvark appreciated that the Gary City Council took responsibility for the open meetings violation because it is important for maintaining public trust. Ms. Hinsvark indicated that she was concerned with the Stipulation as it currently stands because there are no specific measures mentioned to ensure this type of violation does not occur again. Particularly, when it comes to non-board members being present or listening when they should not.

Ms. Hinsvark understood that there is no state law that specifically requires a vote on who is permitted to be present during executive session. She indicated that the Gary City Council had adopted Roberts Rules of Order newly revised for conducting its meetings. Ms. Hinsvark pointed out that Roberts Rules states that an executive session is a meeting or portion of a meeting in which proceedings are secret and only members of the body have the right to attend. She further pointed out that others may attend only by permission of the body. Ms. Hinsvark believed that this makes it clear that presence in executive

session is not automatic unless intentionally allowed by the governing body. She noted that there should be a clear understanding of who is present and why. Ms. Hinsvark proposed moving forward that when the Gary City Council enters into executive session any non-board members, including Joni Kjelden who is listed in her complaint, and other city employees should vacate the building unless they have been expressly approved to remain. Ms. Hinsvark felt that that this would create a clear and consistent standard that removes any ambiguity and helps ensure that this type of violation does not happen again.

Ms. Hinsvark thanked the Commission for their time and consideration.

Chair Smith asked if anyone from the City of Gary was present. Ms. Katz noted that Ms. Joni Kjelden, Gary City Finance Officer, was present on Teams. Ms. Kjelden indicated on the chat screen that she did not have a microphone. Chair Smith offered to allow her to call into the meeting. Chair Smith asked Ms. Kjelden if she wanted to make a statement on behalf of the City of Gary. Ms. Kjelden indicated on the chat screen that she did not.

Seeing no one else present for the City of Gary, Chair Smith opened the matter for deliberation.

Mr. A. Hoffman appreciated the parties drafting a Stipulation and Agreement with the reprimand. He did not believe the Commission had the legal authority to enter into a Stipulation and Agreement. He would like to see it fit with everything that the Commission has done in the past with standard findings of fact and conclusions of law put together and voted on by the Commission on a later date. Mr. A. Hoffman felt the Commission could use the Stipulation and Agreement to draft the findings of fact and conclusions of law. He viewed the Stipulation and Agreement as a signed admission. Mr. A. Hoffman reiterated that he did not believe the Commission had the authority to enter into a Stipulation and Agreement.

Ms. Sovell agreed with Mr. A. Hoffman's comments.

Chair Smith requested further discussion from the Commission members. Hearing none, Chair Smith requested a motion. Mr. A. Hoffman made a motion to find that there was a violation based on the Stipulation and Agreement and that the Stipulation and Agreement would be used to draft findings of fact and conclusions of law.

Ms. Sovell questioned whether it would be appropriate to base the findings of fact and conclusions of law on the Stipulation and Agreement or simply find that there is a violation and use the information from their admission. Ms. Sovell did not want to specifically base it on their Stipulation and Agreement.

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Mr. A. Hoffman agreed with Ms. Sovell and he modified his motion. Mr. A. Hoffman changed his motion to find that there has been a violation and that the Stipulation and Agreement can be used to draft findings of fact and conclusions of law; Ms. Sovell seconded the motion. Chair Smith requested further discussion. Hearing none, a voice vote was held, and the motion was approved by unanimous vote. Motion carried.

*In the Matter of Open Meetings Complaint 2026-02 City of Gary City Council*

Deuel County State's Attorney Craig Evenson appeared (via Teams) as the Complainant. Mr. Reed Mahlke, counsel for City of Gary, did not appear.

Ms. Katz indicated that the parties entered into a Stipulation and Agreement for Reprimand to handle this complaint. Ms. Katz read the signed Stipulation and Agreement and the proposed Order for Reprimand into the record.

Chair Smith asked Mr. Evenson if he wanted to make an oral presentation. Mr. Evenson indicated that he did not think he would have anything different to say other than the city, but he would like to make an audible record at this hearing.

Mr. Evenson indicated that the sheriff conducted an investigation of the situation before the Commission and found the outcome to be three individuals were excluded from a meeting in open session. He did not believe those facts were in dispute. Mr. Evenson understood that the city is looking to admit those facts. Mr. Evenson indicted that he listened to the Stipulation and Agreement being read on the record by Ms. Katz and he is agreeable as far as representing the voters in Deuel County.

Chair Smith thanked Mr. Evenson and asked the Commission members if they had any questions for Mr. Evenson. Hearing none, Chair Smith asked if there was anyone from the City of Gary who would like to respond. Again, hearing none and not seeing a statement from Ms. Kjelden at this time, Chair Smith opened the matter for deliberation.

Mr. Hoffman commented that while he appreciated the work being done to put together the Stipulation and Agreement with the reprimand, he did not believe the Commission had the authority to enter into the agreement. Mr. A. Hoffman suggested moving forward with drafting findings of fact and conclusions of law if the Commission finds that there was a violation.

Chair Smith requested further discussion. Mr. A. Hoffman indicated that he would be making a motion, but he wanted to point out that the Commission may have gone through Gary City Council 2026-01 too quickly. Mr. A. Hoffman is not sure if there is a violation and suggested the Commission review the complaint again. Ms. Sovell agreed with Mr. A. Hoffman and suggested

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that the Commission finish the current motion and circle back to Gary City Council 2026-01 for further discussion.

Mr. A. Hoffman made a motion to find that there was a violation in Gary City Council 2026-02 and that the findings of fact and conclusions of law should be drafted with the help of the Stipulation and Agreement with reprimand offered to the Commission; Ms. Sovell seconded. Chair Smith requested further discussion. Hearing none, a voice vote was held, and the motion was approved by unanimous vote. Motion carried.

*In the Matter of Open Meeting Complaint 2026-01 City of Gary City Council*

Chair Smith acknowledged the Commission voted on the motion and they were still inside the same meeting in which that business took place. He believed the Commission had the authority to reconsider. Ms. Katz believed the Commission had the authority to revisit.

Chair Smith indicated that Mr. A. Hoffman had a statement to offer as it relates to the motion that was passed.

Mr. A. Hoffman indicated that he reviewed some statutes and re-read the Stipulation and Agreement that was offered. While Mr. A. Hoffman understood the concern of having other people in executive session, he could not find a statute that states that they cannot be present. He felt that if a commission or council or whatever it may be goes into executive session and they want outside people in that executive session with them they absolutely have the right to do that. Mr. A. Hoffman stated that if the Gary City Council did not ask them to leave that could be viewed as an assumed agreement or assumed permission for those people to be in that meeting, so he believed that was not a violation for the other three people to be present.

Mr. A. Hoffman addressed having someone within earshot of executive session. He felt the board had an obligation to make sure people cannot hear but he could not find anything in statute that says that they absolutely must make sure that occurs. Mr. A. Hoffman pointed out that you cannot control everybody all the time. Mr. A. Hoffman reiterated that he understood the concern, but he could not find where it would be a direct violation of the open meeting laws.

Ms. Sovell agreed with Mr. A. Hoffman. She was basing it on their admission, but you cannot allow someone to admit to a violation that is not technically a violation.

Chair Smith indicated that he was not aware of the Stipulation and Agreement until this morning as he missed that email. He stated that since the parties signed the Stipulation and Agreement that led him to say the Commission

could move forward. Chair Smith agreed with Mr. A. Hoffman on what sort of precedent the Commission would set by finding a violation if not found within statute. Chair Smith agreed that SDCL 1-25-2 does not prohibit the behavior. He believed that Mr. A. Hoffman did a great job of pointing that out and rationalizing why.

Ms. Sovell believed the Commission needed to reconsider the motion because as she looks at the many meetings that she had attended where employees were asked to remain as the issue may involve that person. As much as she was basing it on the admission itself, she believed it to be right that the Commission revisit it.

Mr. A. Hoffman made a motion to rescind his original motion that found a violation; Ms. Sovell seconded the motion as the individual who seconded the original motion. Chair Smith requested further discussion.

Mr. Russell questioned Ms. Katz's rationale for the Stipulation and Agreement as it relates to finding the violation. Mr. Russell would like to hear from her.

Ms. Katz stated that Ms. Hinsvark indicated in her complaint and in the materials that somebody was sitting outside the door of the executive session and all others had left the building. Ms. Hinsvark felt that it was not a closed and confidential meeting if someone could overhear what was occurring.

Mr. Russell asked if it was Ms. Katz's opinion that the statute does not require that the meeting that took place, in retrospect, was not a violation of the statute. Ms. Katz questioned whether Mr. Russell was asking if the meeting that was held in executive session pursuant to SDCL 1-25-2 was a violation. Ms. Katz indicated that Ms. Hinsvark felt there was a violation.

Mr. Russell further questioned Ms. Katz that, in retrospect, as she looked at the statute, did she believe that there was a violation.

Ms. Sovell raised the concern that if the Commission's legal counsel tells them it is a violation it is essentially taking their jobs away and putting in the opinion of their counsel for the decision that the Commission is making. Ms. Sovell did not want to go down the road where the Commission relies on their legal counsel to serve the responsibility of the Commission as a whole to make that decision. She was concerned that if the determination is passed onto their legal counsel, the Commission would be heading down an uninterested path.

Mr. Russell clarified that the reason he asked was that there was a stipulation drafted by Ms. Katz there was in fact a violation and it was also agreed to by the attorney for the city. Mr. Russell understood that ultimately the decision is the Commission's decision, but he was trying to get to whether the

Commission's counsel now believed, in retrospect, that there may not have been a violation.

Ms. Sovell wanted to make one point of clarification which was she believed the stipulation was not drafted by Ms. Katz but rather submitted for review. Ms. Katz indicated that it was a combination of both; she drafted and Mr. Mahlke reviewed. Ms. Sovell apologized as she misunderstood.

Ms. K. Hoffman did not believe that when Ms. Katz was involved, she was not necessarily picking one side or the other, rather she was just reviewing the language to ensure that it covered what it needed for the Commission to consider.

Ms. Sovell felt that was fair and the Commission had to interpret that as such. Chair Smith agreed.

Chair Smith indicated that the Commission was still in the discussion portion. Is there any further discussion at this time concerning the motion to rescind? Hearing none, Chair Smith called for a roll call vote. Ms. Katz held a roll call vote: Chair Smith, Mr. A. Hoffman, Ms. K. Hoffman, and Ms. Sovell all voted aye. Mr. Russell voted nay. Motion carried.

Chair Smith stated that since the motion had been rescinded it is his position that he is going to open the floor to Ms. Hinsvark for oral presentation and he would provide her with the full fifteen minutes allotted.

Ms. Hinsvark pointed out that her complaint is with the city council for not security the area and with Ms. Kjelden, who is the city finance manager and a non-board member, who was asked to leave the executive session. Ms. Hinsvark pointed out that Ms. Kjelden sat directly on the other side of the door across from the restroom. She indicated an individual went to use the restroom and witnessed Ms. Kjelden sitting on the other side of the door.

Ms. Hinsvark indicated that Ms. Kjelden knows that rules of executive session and she knows that she should not be sitting on the other side of the door, which is Ms. Hinsvark's complaint. Ms. Hinsvark questioned how many executive sessions Ms. Kjelden listened to when she was not supposed to be there. Ms. Hinsvark stated that is where he complaint comes in. Ms. Hinsvark pointed out that the public is asked to leave the building, and Ms. Kjelden never actually leaves the building.

Ms. Sovell asked Ms. Hinsvark if there was any indication that the governing body was aware of or invited or solicited Ms. Kjelden in proximity to where she could hear what was going on.

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Ms. Hinsvark inquired if Ms. Sovell was asking if the governing body was allowing her to sit there. Ms. Sovell asked if the governing body had in any way solicited her to be within earshot of their executive session. Ms. Hinsvark believed Ms. Kjelden was asked to leave at that point.

Ms. K. Hoffman questioned Ms. Hinsvark that when your city holds your open meeting is it at the end of the meeting that they hold the executive session and then they ask the whole group to leave? Mr. K. Hoffman pointed out that they would still have to return at some point to end the meeting and typically the finance officer is the one who keeps the minutes, so she was wondering if that would be a reason why the finance officer would stick around.

Ms. Sovell also pointed out that many times there is a public motion made immediately following those executive sessions, and it is the record keeper that is often nearby, so it is very hard to find a governing body was violating anything within the open meeting laws under those circumstances.

Ms. Hinsvark could understand if Ms. Kjelden went further back into the building but Ms. Kjelden sat directly on the other side of the door to listen. Ms. Hinsvark noted that in the past one of the board members has gone further back into the building to get Ms. Kjelden when they call the public back at the end of a closed meeting.

Ms. Sovell clarified that when the Commission is reviewing a complaint for violations, they are looking at the governing body itself. She went on to say that if there is something an employee has done the governing board or the supervisor of that individual needs to address the issue. Ms. Sovell indicated that was why she asked Ms. Hinsvark the question of whether there was any indication that the governing body invited this behavior from the employee. Ms. Sovell asked Ms. Hinsvark if there was anything else that she would like to add regarding the governing body's actions when this occurred?

Ms. Hinsvark indicated that she could not speak to that because she was outside and not in the executive session.

Ms. K. Hoffman asked Ms. Hinsvark if she was outside the room but still within the building where the open meeting is being held or is the public kicked out outside the building completely if not a board member or this specific finance officer?

Ms. Hinsvark indicated outside the building completely. Ms. K. Hoffman asked if that is where the public remains until they come out of executive session and the public is invited back for the open meeting? Ms. Hinsvark confirmed.

Chair Smith asked if the City of Gary wanted to respond. Hearing none, the Commission moved back into deliberations.

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Mr. A. Hoffman understood Ms. Hinsvark's concern as they should be closed private executive sessions. He agreed that if somebody is sitting close to the door and listening that is a concern. However, Mr. A. Hoffman could not find any statute that gives them authority to find a violation. He felt this is something that could be reviewed on the task force side in the future. Mr. A. Hoffman felt the city council needs to handle the matter with the city manager and have her located farther away from the room when she is not participating in executive session. Mr. A. Hoffman does not find it to be a violation of the open meeting laws.

Ms. K. Hoffman agreed with Mr. A. Hoffman. She felt the board needed to do a better job of setting boundaries of where they want the finance officer located if she is excluded from executive session. Ms. K. Hoffman does not believe that it rises to the level of a violation.

Mr. Russell does not believe the facts have been properly developed during this hearing as to what exactly occurred. The concern that he had was it appeared that the city attorney acquiesced in a stipulation that the Gary City Council violated the statute and the attorney not being present at this time, maybe because of the manner in which we handled this situation, may not allow the Commission to have adequate information to make the determination. Mr. Russell felt the facts had not been sufficiently developed but there appeared to be facts according to the city attorney that allowed him to agree the Gary City Council violated the statute. He indicated that the Commission does not have sufficient information to make a determination.

Ms. Sovell asked Mr. Russell if he was proposing that someone make a motion to table until the next meeting.

Mr. Russell thought that would be advised under the circumstances so that the Commission could get more information as to why the Gary City Council and their legal counsel believed the Gary City Council were in violation of the statute.

Ms. Sovell was not sure if it would be a motion to table or a continuation of the hearing.

Chair Smith indicated that it would likely be a continuation, which would need a motion to effectuate.

Chair Smith understood Mr. Russell's point, but he believed a full investigation was completed. The best Chair Smith could tell he does not believe he is missing anything. Chair Smith was not sure if there would be additional information that they could gather and he questioned if the Commission were inclined to continue would it ultimately be with a request to send it back to the

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Complainant and State's Attorney for further investigation or is there anything else missing.

Mr. Russell was reluctant to make a motion and wanted to fully investigate the situation and maybe have the city attorney participating before the Commission makes some type of decision. He believed based on the Stipulation and Agreement there certainly was an acquiesce that the Gary City Council was in violation of the statute. From what Mr. Russell gathered and the questions he asked that have been objected to by the other Commission members as to the questioning of the Commission's counsel regarding the validity of the Stipulation and Agreement, he felt the Commission should vet this more. Mr. Russell indicated that he would leave that to the other members if they needed more information on this particular matter.

Ms. Sovell suggested that she may have spoken too quickly in trying to cut off Ms. Katz as she ultimately advises the Commission. Ms. Sovell thought it may be more of a chairman's request, but she believed if Ms. Katz had something more that would be helpful to the Commission they would certainly hear it. Chair Smith agreed. Ms. Katz did not have anything more to add other than she felt continuing the hearing would be appropriate.

Chair Smith asked for a motion or further discussion. Mr. A. Hoffman was not opposed to hearing from the city attorney. Mr. Russell made a motion to continue the hearing; Mr. A. Hoffman seconded. Chair Smith requested further discussion. Chair Smith added that the city attorney believed that the stipulation was going to be signed and with now where the Commission is at it does seem advisable and prudent to allow the city attorney the opportunity to be heard. Hearing no further discussion, a voice vote was held, and the motion was approved by unanimous vote. Motion carried.

*In the Matter of Open Meetings Complaint 2026-03 City of Egan City Board of Trustees*

Ms. Michelle Ten Eyck appeared (via Teams) as one of the Complainants. Complainant Mr. Jerome Olson, to the knowledge of the Commission, did not appear. Mr. Reed Mahlke, counsel for City Egan, did not appear.

Ms. Katz read the signed Stipulation and Agreement and the proposed Order for Reprimand into the record.

Chair Smith indicated that it is his intent to allow Ms. Ten Eyck the opportunity to make an oral presentation with the understanding that there is a signed Stipulation and Agreement. The Commission, however, would like to provide Ms. Ten Eyck the opportunity given that the Commission had ultimately decided in both matters involving the City of Gary not to adopt the Stipulations and Agreements and instead made its own motion after an

opportunity to be heard. Chair Smith asked Ms. Ten Eyck if she wanted to take the opportunity as the Complaint to make a statement. Ms. Ten Eyck stated yes.

Ms. Ten Eyck indicated that she and Jerome Olson are on the city council board and that these violations are multiple. She is concerned that there are a lot of items in the complaint that are not addressed in the Stipulation and Agreement. Ms. Ten Eyck felt the Stipulation and Agreement is not true and correct if they only agree to failing to post agendas and minutes when there are multiple violations where they are making decisions outside the meetings and they have quorums outside the meetings. Ms. Ten Eyck believed her complaint warranted a deeper look at all the complaints and not just isolating it down to one, two, or three of them. There were thirty-two complaints, some of which do not fall within the open meetings piece of it but multiple of them do. Ms. Ten Eyck does not believe the Stipulation and Agreement was accurately represented to the board and the Commission because they only stipulated to a couple of things.

Chair Smith asked the Commission if they had any questions for Ms. Ten Eyck.

Chair Smith asked if anyone was present on behalf of the City of Egan. He noted that it appears to be the same attorney that represents the City of Gary.

Hearing none, Chair Smith opened the floor for deliberations.

Ms. Sovell noted that since Gary 2026-01 was continued to allow that attorney to appear and Mr. Mahlke may have deemed his presence unnecessary, she felt the Commission should discuss treating this complaint the same way with a continuation.

Mr. A. Hoffman agreed with Ms. Sovell. He believed there are two things that needed to be taken into account. The first is that the Commission does not have the authority to enter into the Stipulation and Agreement and the second the city attorney should be present to be given an opportunity to be heard.

Chair Smith does not have a complaint with that either. He added that under SDCL 1-25-7 the open meeting commission shall examine the complaint and investigatory file submitted by the state's attorney. Chair Smith pointed out that the state's attorney did not submit an investigatory file, which also gives him pause.

Mr. A. Hoffman questioned if this complaint was submitted directly to the Attorney General's office. Ms. Katz indicated it was submitted directly to the Attorney General's office, and she referred the matter to State's Attorney Paul Lewis. She did notice an investigation had not been completed when State's Attorney Lewis sent the letter referring the matter to the Commission.

Ms. Ten Eyck advised that they submitted a complaint in November to the Attorney General's office because they were not sure of the process. She went on to say that the Attorney General's office referred it back to State's Attorney Lewis, but nothing happened. In January or so, they resubmitted their complaint with additional complaints both to State's Attorney Lewis and the Attorney General's office. Ms. Ten Eyck indicated that there was a timeline given for State's Attorney Lewis to complete an investigation and he exceeded that timeline. The Attorney General's office contacted State's Attorney Lewis again and his response was he was forwarding the complaint to the Commission. Ms. Ten Eyck advised that their complaint was submitted to State's Attorney Paul Lewis the second time by certified mail.

Chair Smith submitted that SDCL 1-25-7 reads based on the investigatory file submitted by the state's attorney or the attorney general. He pointed out that the complaint came from the state's attorney. Chair Smith further submitted that based on the investigatory file submitted by the state's attorney or the attorney general and any written responses the Commission shall issue a written determination. Chair Smith was not confident moving forward without more of an investigatory file. He did not believe the Commission had anything that constituted an investigatory file, but he felt statute allows that to be collected either through the state's attorney or attorney general. Chair Smith submitted that the complaint is ultimately received by the Commission through the state's attorney. Chair Smith indicated as he read through it he noticed a signed document by the state's attorney, a complaint which was notarized by both Ms. Ten Eyck and Mr. Olson and what appeared to be attachments by the Complainants regarding the conduct. Chair Smith asked Ms. Katz if that was accurate. Ms. Katz indicated yes.

Ms. Sovell questioned if the complaint should be sent back.

Chair Smith felt that this ultimately is not ready to statutorily be heard by the Commission without an investigation.

Mr. A. Hoffman agreed. He understood where this was coming from. Mr. A. Hoffman noted that there were multiple complaints that the Commission does not have authority over SDCL 9-14, but does for SDCL 1-27. He felt those complaints need to be parched out by the state's attorney so that the Commission can focus on what may or may not be an actual violation. Chair Smith and Ms. Sovell agreed.

Chair Smith asked for further discussion. Mr. A. Hoffman made a motion to refer this complaint back to the Moody County State's Attorney and politely ask that a full investigation is completed and presented to the Commission at a further date. Ms. Sovell commented that if the state's attorney is inclined within his discretion to refer it back after he has the investigative report before

him. Mr. A. Hoffman added the discretionary language to the motion because at the end of the day it is discretionary at the state's attorney level. With that addition, Ms. Sovell seconded the motion. Chair requested further discussion. Hearing none, a voice vote was held, and the motion was approved by unanimous vote. Motion carried.

*In the Matter of Open Meeting Complaint 2025-05, Town of Hermosa Town Board of Trustees*

Chair Smith opened the matter for oral presentation. Chair Smith asked if Ms. Henrichsen was present and found that she was not present. He pointed out that Ms. Henrichsen was not present when the Commission originally addressed the matter more than an hour ago. Chair Smith pointed out that Ms. Katz indicated that through discussion with Ms. Henrichsen that she indicated she would avail herself remotely. Chair Smith found the time to be almost 11:30 a.m. and the meeting was properly noticed to begin at 10:00 a.m. Chair Smith asked if anyone from the Town of Hermosa was present and wanted to make an oral presentation. He found that Mr. J. Scott James, counsel for Town of Hermosa, was not present.

Chair Smith opened the matter for deliberations.

Ms. Sovell noted that the letter from Mr. James states, "It is clear the actions of the Board on this date violate the specific requirements of SDCL 1-25-1.1." And it continues, "After all the Board could simply meet earlier than the announced agenda it could defeat the purpose of the statute which is to give citizens the ability to participate in the civic governance of their community." Ms. Sovell does not believe the City of Hermosa was contesting and the letter indicates there are comments on mitigation and things that they are going to do to correct their actions, which is exactly what the Commission would like to see. Based on the complaint and the response from counsel, she believed there was a violation.

Chair Smith requested further discussion.

Ms. Sovell made a motion to find there was violation and an appropriate reprimand be instituted; Mr. A. Hoffman seconded. Mr. A. Hoffman noted that one of the main reasons posted agendas contain times and places is so that the public can participate in these meetings. Mr. A. Hoffman further noted that it was worrisome to him if public bodies are holding a "work session" beforehand without any kind of notice and the public not being able participate. He was glad they realized the issues and hopefully it will not happen again.

Mr. Russell wanted to thank Mr. James for the letter submitted on behalf of the Town of Hermosa. He pointed out that Mr. James outlined how he was going to try and make sure this does not happen again. Mr. Russell felt that the

Town of Hermosa was very contrite and open and that Mr. James' letter was very organized and well done.

Hearing no further discussion, a voice vote was held, and the motion was approved by unanimous vote. Motion carried.

Discussion of future meetings

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

Ms. Sovell requested that there be discussions regarding a template admission or something to expedite. She feels that a clear procedure needs to be established. Mr. A. Hoffman indicated that he added that to his notes to talk about at a task force meeting and he was not opposed to an agreement being made between the parties. He felt that the complainant needed to be a part of a stipulation and agreement since that person is the one bringing everything forward. Mr. A. Hoffman believed that could alleviate having all parties as part of that to make the process simpler, quicker and smoother.

Ms. Sovell felt the Commission could approve a waiver of the hearing and approve a stipulation but would not necessarily be executing it to stipulate to those facts.

Chair Smith pointed out that it is not uncommon where responses include admissions so having a way to work through it more efficiently would be advantageous for the Commission.

Ms. Sovell suggested the document state admissions by the respondent are as follows and list those admissions.

Adjournment

A motion to adjourn was made by Mr. A. Hoffman and seconded by Ms. K. Hoffman, at approximately 11:40 a.m. Roll call was made with all Commissioners voting aye, and the Commission adjourned.

Approved on this _____ day of _____ 2026.

SOUTH DAKOTA OPEN MEETINGS COMMISSION

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Michael J. Smith, Chair

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