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SOUTH DAKOTA

OPEN MEETINGS COMMISSION

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IN THE MATTER OF OPEN MEETING
COMPLAINT 2024-10 GREEN VALLEY
SANITARY DISTRICT

=====

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

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MONDAY, NOVEMBER 25, 2024

CHAIRWOMAN SOVELL: Next matter on the agenda is 2024-10, which is the Green Valley Sanitary District complaint. In that we have received materials, the initial complaint, the August 8 acknowledgements, the emails for extension, September 13 letter, September 21 letter, notice of hearing, proposed agenda, and our certificates of service. Does everyone have the information necessary to proceed?

MR. HOFFMAN: Yes.

CHAIRWOMAN SOVELL: The complainant on this one is Steven Myers. Steven Myers, are you present here or in the video world?

MR. MYERS: Yes, I am here.

CHAIRWOMAN SOVELL: Mr. Myers, you will be provided the opportunity for oral presentation. You will have 15 minutes to present. You may, at your discretion, reserve a portion of that time for rebuttal. And Mr. Blair, if you are prepared to set your timer, we will go ahead.

MR. BLAIR: I would like to just confirm again that the Green Valley Sanitary District representatives are available to hear Mr. Myers' statement? I can't quite see who is on. Erika, are you present?

MS. OLSON: Can you hear me?

MR. BLAIR: I can hear you now.

MS. OLSON: This is Erika Olson, and I have district

1 president Scott Mohr with me.

2 CHAIRWOMAN SOVELL: You were really cutting out. Who
3 is there with you? Erika Olson is counsel, and who is present
4 with you?

5 MS. OLSON: I have Scott Mohr.

6 CHAIRWOMAN SOVELL: With that, we will go ahead and go
7 back to the complainant, and we will set the timer, and Mr.
8 Myers, you will be given your 15 minutes. You may proceed.

9 MR. MYERS: Thank you. I am Steve Myers. I live at
10 5648 Greenwood Lane, which is in the Green Valley Sanitary
11 District in Rapid Valley, South Dakota, and I have been a
12 resident there since 1983. Last week I sent this Commission a
13 lot of information and the documents to support it. That's all
14 there for your consideration. I had a lot longer presentation,
15 but I think I'll shorten it a little bit.

16 In approximately 2008, residents voted for clean
17 drinking water. We have a 25-year rural development loan with
18 a special annual assessment of \$424.68 per home that started in
19 2011. The current bylaws of Green Valley Sanitary District
20 were signed by then board president Jason Reitz and secretary
21 Lorretta Jangula on April 16th, 2021.

22 Article 1, section 23 states, and I quote, the
23 district created and established under this chapter shall be a
24 government subdivision of this state and a public body, end
25 quote. Please note government subdivision, not political

1 subdivision. Article 5, section 2 under loan states, and I
2 quote, no loan shall be contracted on behalf of the district
3 and no evidence of indebtedness shall be issued in its name
4 unless authorized by a resolution from the Board of Trustees.

5 Although there was no vote to approve a sewer project,
6 the first check to Interstate Engineering was written on August
7 15, 2017. By early November of 2021, GVSD had paid Interstate
8 Engineering over \$130,000. And by mid November of 2021, GVSD
9 owed over another \$113,000. January 4, 2022, GVSD board
10 president Jason Reitz, vice-president Marlin Kelly, and
11 treasurer Leonard Lucky Lee went to Black Hills Federal Credit
12 Union and each signed a \$200,000 loan. Please note *individual*
13 written behind each signature.

14 In the months before securing the loan at Black Hills
15 Federal Credit Union, there were discussions at four meetings
16 about obtaining a loan, three of which were public. I have
17 attached the minutes that pertain to this complaint because
18 they can no longer be read at the Rapid Valley Sanitary
19 District website that they were gracious enough to give us a
20 link on since 2021. Only the years 2023 and 2024 are now
21 available.

22 At no time was a resolution brought before the board
23 for a vote on this loan or either of the two renewals. As you
24 are aware, with no official resolution, this left the residents
25 with no say in this matter, even if they were aware of it. The

1 words short term were used to describe this loan at three of
2 the four meetings, yet here we are almost three years later and
3 all that's happened is we have made interest payments of \$4,500
4 in January of 2023, \$9,460 in January of 2024, and an
5 anticipated \$14,299 in January of 2025.

6 I've been attending the GVSD meetings regarding the
7 sewer project since 2021. I was appointed trustee at large on
8 January 11, 2023. The first time I heard of this loan was at
9 the March 8, 2023, meeting when Interstate Engineering
10 president Lonni Fleck attended the meeting. The topic of
11 shelving the project came up. Board president Jason Reitz
12 immediately asked how the \$200,000 loan would get repaid. He
13 then stated something to the effect the three of us, pointing
14 out vice-president Marlin Kelly and treasurer Lucky Lee, took
15 out a \$200,000 loan to get you paid. Lonni expressed great
16 concern why those three would take on such debt and suggested
17 they should have come to her first.

18 Of the numerous residents that I have talked to about
19 this loan, all thought it was a personal loan and that the
20 board members are responsible for it. Jason tried to change
21 that belief about October of 2023. The treasurer, who had
22 wanted to resign from the board, told me that he wouldn't leave
23 until this sewage project was up and going. Lucky told me that
24 he didn't want that loan hanging over his head.

25 That's when board president Jason Reitz noted he had

1 talked with Erika Olson, the board's attorney, and was told
2 that there was nothing to worry about. He said that the
3 attorney told him that the loan was taken out in good faith so
4 the three signees would not be responsible for the loan.

5 At the November 8, 2023, meeting, Lucky resigned as
6 treasurer and I was appointed to fill his position. After I
7 discovered many items of concern, I brought them to the board
8 and to the residents at the December 13, 2023, meeting. I
9 resigned at that meeting. At the February 14, 2024, meeting, a
10 resident asked about the \$200,000 loan. She was told it was
11 taken out to pay bills. She asked how it was going to get
12 repaid. Vice-president slash treasurer Scott Mohr told her
13 that the project, when the project gets going, rural
14 development will pay GVSD back the amount that was paid to
15 Interstate Engineering. Val's next question was what if this
16 sewer project doesn't happen. Scott Mohr replied something to
17 the effect we will have to tax you through a special assessment
18 to pay that loan.

19 Hearing that prompted me to file this complaint on
20 February 26th of 2024. The three trustees, Jason Reitz, Marlin
21 Kelly, and Leonard Lucky Lee offered as security to Black Hills
22 Federal Credit Union for this loan for the sewer project two
23 accounts, 0121 and account 1000. Both accounts are funded from
24 the special assessment taxes that the residents have paid for
25 the water loan.

1 Now we have a loan that was taken out and renewed
2 twice without an approved resolution of the board, a credit
3 union holding as collateral for a sewer project tax dollars
4 that were paid by the residents for their water system, a
5 short-term loan that's almost three years old, a loan that some
6 residents didn't know about and no resident had a say in, a
7 loan we paid a lot of interest on, and no payment on the
8 principal has been made.

9 The GVSD trustees have put the district in such debt
10 and have further compounded it with a \$200,000 short-term loan.
11 It is my hope that this burden is put back on the five signees,
12 Jason Reitz, Marlin Kelly, Leonard Lucky Lee, Lorretta Jangula,
13 and Scott Mohr, and they should be held responsible for this
14 loan, both renewals and all the interest that the GVSD
15 residents have paid.

16 As to the allegation of me not signing under oath, of
17 the many times I've had things notarized, I've never been asked
18 to sign under oath. I did exactly what the State's Attorneys
19 Office directed me to do. If you would like me to swear to
20 this letter, my signature and the evidence given, I would be
21 glad to.

22 Lastly, I want to bring up my allegation number two,
23 and I do understand the state's attorney found no merit in it,
24 but it has to deal with quorum, and it's my belief that a
25 president, a treasurer, and a secretary, only three people that

1 are on the board and those three people do not, are not a
2 quorum. I've given you the South Dakota Codified Laws to back
3 it up, and I would appreciate your opinion on it. Thank you
4 very much.

5 CHAIRWOMAN SOVELL: Okay, thank you. Mr. Blair, how
6 much time will he have for rebuttal?

7 MR. BLAIR: Six minutes.

8 CHAIRWOMAN SOVELL: You will have six minutes for
9 rebuttal, and we will now allow the Green Valley Sanitary
10 District to respond. Again, 15 minutes will be permitted for
11 your response, and I will allow you to go ahead when you are
12 ready.

13 MS. OLSON: Thank you. Can you hear me?

14 CHAIRWOMAN SOVELL: Yes, we can. Thank you.

15 MS. OLSON: I have with me Scott Mohr, who is the
16 current president of the Board of Trustees of Green Valley
17 Sanitary District. I appreciate your time today.

18 COURT REPORTER: Whoa, whoa, whoa.

19 CHAIRWOMAN SOVELL: For some reason, you are really
20 cutting out. I'm not sure if you can pull your microphone
21 closer.

22 MS. OLSON: I'm going to sit closer here. Can you
23 hear me better now?

24 CHAIRWOMAN SOVELL: That is much better, thank you.

25 MS. OLSON: Green Valley objects to the extensive

1 material Mr. Myers has submitted as of last week, which include
2 additional issues, allegations, and evidence which were not a
3 part of the original Pennington County State's Attorneys Office
4 investigation or which were determined by the state's attorney
5 to have no merit.

6 When a complaint is made under Title 1-25, the state's
7 attorney has three options. They can either prosecute the case
8 according to Title 23A or they can determine that there is no
9 merit to prosecuting the case, in which case they submit the
10 complaint and the investigation file to the attorney general
11 for statistical purposes, or they can send the complaint and
12 the investigation file to this board.

13 CHAIRWOMAN SOVELL: We are struggling here, the court
14 reporter, we are still really struggling with some cutting out,
15 and it was clearer for a while, but now it seems to be fading
16 for some reason. We will try it and see. I really would like
17 to keep my court reporters happy, and we just want to make sure
18 we have a good, clear record. I think when you are closer to
19 the mic, it is better. So I'm not sure, as uncomfortable as it
20 may be, come nice and close to the microphone and we will try
21 it.

22 MS. OLSON: Okay, thank you. As I was saying, State's
23 Attorney Roetzel received Mr. Myers' complaint and investigated
24 it. She determined several of Mr. Myers' complaints had no
25 merit to prosecute. Those were forwarded to the attorney

1 general for statistical purposes. That included Mr. Myers'
2 complaint about the makeup of the Board of Trustees and the
3 quorum questions.

4 The one complaint forwarded to this Commission is set
5 forth in State's Attorney Roetzel's letter to this Commission
6 as follows. Quote, the remaining issues sent for the
7 Commission's consideration involve GVSD's obtaining of a bank
8 loan of \$200,000 on or about January 4, 2022, through Black
9 Hills Federal Credit Union without taking formal action at a
10 formal meeting, in violation of GVSD's bylaws and in potential
11 violation of state law.

12 All other allegations and issues raised by Mr. Myers
13 in his submissions could not be considered by this Commission
14 under 1-25-6.3 because they were determined by the state's
15 attorney to have no merit or to the extent that they raised new
16 issues and evidence not presented for the states attorney's
17 investigation.

18 The extent of the record for this Commission's review
19 is set forth by SDCL 1-25-7. The Commission shall, quote,
20 examine the complaint and investigatory file submitted by the
21 state's attorney and shall also consider signed written
22 submissions by the persons or entities that are directly
23 involved. They would especially object to consideration of
24 statements of other individuals who are not directly involved
25 and who are not under oath that were submitted in Mr. Myers'

1 materials. In addition, some of these submissions were not
2 timely and have not had the chance to properly consider or
3 respond to them.

4 Getting to the substance of the issue that the state's
5 attorney presented to the Commission to consider is the loan
6 that GVSD obtained with Black Hills Federal Credit Union in
7 January of 2022, to pay for engineering costs for its sewer
8 project, asking if this action was taken in violation of GVSD
9 bylaws and state law.

10 A complete review of relevant actions and documents
11 and the applicable statutes confirms that no violation of the
12 South Dakota open meetings law has occurred, which is the
13 limited scope of authority of this Commission. As Mr. Myers
14 acknowledges, the agendas and minutes confirm the loan was
15 discussed at regular GVSD meetings, which were open to the
16 public.

17 The affidavits of the past and current board members
18 which were submitted confirm that the agendas for the monthly
19 board meetings are posted by the president on the exterior door
20 of the meeting room at Rapid Valley Sanitary District's office
21 in advance of the meetings. The majority of the trustees
22 recall discussing the loan at various meetings and the
23 consensus that it was needed.

24 The South Dakota Open Meetings Commission is created
25 by statute and has only the jurisdiction and authority granted

1 to it by the legislature, which is to determine, under SDCL
2 1-25-7, whether the alleged conduct violates the open meetings
3 law under Title 1-25. Other issues such as compliance with
4 other laws, rules, or bylaws of the entity, are not within the
5 Commission's authority.

6 It is important to note, in addition, that not all of
7 the provisions of SDCL 1-25 apply to all types of entities.
8 Based on the definitions found in SDCL 1-25-12 and 34A-5, a
9 sanitary district is a political subdivision under subsection
10 1, and it is a public body under subsection 2. However, it is
11 not considered a part of the state, as that term is defined in
12 subsection 5.

13 The provisions of SDCL 1-25-1 relating to official
14 meetings being open to the public and SDCL 1-25-1.1 regarding
15 notice of meetings of political subdivisions apply to GVSD as a
16 political subdivision and a public body. However, SDCL
17 1-25-1.3 regarding notices of meetings of the state and 1-25-3
18 regarding minutes of proceedings apply only to the state and
19 thus do not apply to a political subdivision such as GVSD.

20 The record reflects that all meetings in question were
21 open to the public, in compliance with SDCL 1-25-1. Agendas
22 for the meetings were posted in advance of the meeting, in
23 compliance with SDCL 1-25-1.1. The agendas included
24 information about the loan being considered, giving the public
25 notice that the loan would be discussed at the meeting. GVSD

1 has complied with the applicable provisions of SDCL Chapter
2 1-25 in relation to the loan obtained from Black Hills Federal
3 Credit Union.

4 While the minutes of the meetings do not document a
5 specific vote, the trustees acting at the time confirmed
6 consensus on the action, as evidenced by the documents signed
7 with the bank. Provisions of SDCL 1-25-3 requiring the minutes
8 to document the voting do not apply to a sanitary district but
9 apply only to the state.

10 Other matters which the state's attorney asked this
11 Commission to consider, including compliance with other state
12 laws, are outside of the authority and jurisdiction of this
13 Commission and should not be considered by the Commission. In
14 addition, the complaint which was filed with the State's
15 Attorneys Office was acknowledged, but it was not administered
16 under oath, which is a criteria of SDCL 23A-2-1.

17 The Board of Trustees considered the loan with Black
18 Hills Federal Credit Union in several meetings, which were
19 noticed and held as public meetings in compliance with SDCL
20 Chapter 1-25, and there was consensus among the Board of
21 Trustees to approve the loan. As a result, no violation of the
22 South Dakota open meetings law has occurred in this complaint.

23 CHAIRWOMAN SOVELL: Okay, thank you. You still have
24 time if there's anything else. Steve, how are we on time?

25 MR. BLAIR: Six minutes.

1 CHAIRWOMAN SOVELL: You have six minutes remaining, if
2 there's anything else you would like to elaborate on for the
3 Commission or if your client would like to state.

4 MR. MYERS: Yes, I'd like to address it.

5 CHAIRWOMAN SOVELL: Yes, complainant can go ahead and
6 proceed at this time as long as the respondents are concluding
7 their oral presentation.

8 MS. OLSON: Thank you.

9 CHAIRWOMAN SOVELL: Mr. Myers, you can go ahead and
10 proceed.

11 MR. MYERS: There were only three meetings that were
12 public, one was not public, and that's going to be addressed in
13 further allegations -- I'm sorry, complaints that I have before
14 the state. There were never agendas posted on the door until
15 February of 2024. The agendas before that time while I was
16 trustee for almost a year were emailed to us, never posted
17 anywhere, and I have given you letters that support that, that
18 the agendas were never posted on the door.

19 All of these other allegations that I supposedly have
20 are going to be coming up. I've got about eight of them in two
21 pages over two different complaints. One of them is going to
22 be about executive session, where the attorney was there and
23 they went into executive session to complain about Steve Myers.
24 That's not a complaint.

25 There's going to be a whole bunch more about all of

1 the meetings that there were no agendas to, all of the meetings
2 that were not advertised to the public, a complaint about the
3 board stopping me from recording the minutes. So we have got a
4 lot coming up. And I stand by everything else that I have
5 given you guys and submitted. I don't know where the political
6 subdivision is coming from, but the bylaws clearly state
7 governmental subdivision. Thank you.

8 CHAIRWOMAN SOVELL: Thank you. With both of the oral
9 presentations concluding at this time, we will go into our
10 deliberation portion of the hearing. I guess I would start by
11 saying I understand that there's allegations concerning bylaws,
12 but we are limited in what we review. We are specifically
13 focusing on whether or not there is any violation of the open
14 meeting laws, and we will be focusing solely on that.

15 The issue that was referred to us through the State's
16 Attorneys Office will be the only issue I believe we should be
17 taking up here today. If there are other legal concerns or
18 issues, I don't know that we are the right forum. I guess I
19 will ask the Commission members if they see that differently.

20 MR. HOFFMAN: I would agree with that.

21 MR. SMITH: I would as well.

22 MS. HOFFMAN: Same.

23 CHAIRWOMAN SOVELL: That being said, I open it up. Do
24 any of the Commission members have questions for the
25 complainant or the respondent? I'm going to start out with the

1 more pointed assertion that we don't have a valid complaint
2 because it was not under oath. It was a notarized statement,
3 it didn't have the subscribed and sworn to, as I understand the
4 assertion. The complainant has said he stands by it under
5 oath. I think we proceed on that. I don't know that we have
6 ever had that as a question before us, someone didn't have a
7 proper subscribed and sworn to versus the notary, and I think
8 we still proceed as a valid complaint. Does anyone disagree
9 with that?

10 MR. HOFFMAN: No.

11 MS. HOFFMAN: No.

12 MR. SMITH: No.

13 CHAIRWOMAN SOVELL: Then I think we get into the nuts
14 and bolts of the argument and the response, focusing solely on
15 that bank loan and the execution of that on January 4, 2022. I
16 would like -- maybe this is a question for counsel for the
17 sewer district and the assertion that the sanitary district
18 does not have to comply with the normal recording of votes and
19 the differences in the public entities.

20 I'm just going to go back and have you reiterate that
21 for us, for the board as a whole. I don't know we have been
22 presented this argument before. I'm going to have you break
23 that down for us again, if you would please.

24 MS. OLSON: I'm going to grab my laptop here real
25 quick. So the SDCL 1-25 differentiates between the state and

1 political subdivisions. And if you look at the provisions of
2 1-25-1, you can see that the terminology there refers to the
3 state and its political subdivisions, whereas if you look at
4 the provisions of 1-25-3, it specifies only state, it does not
5 include political subdivisions. And that is the case for the
6 requirements of 1-25-1.4, which also applies to a state board,
7 commission, or department. So I think the statute is clear
8 that there are some parts that apply to all types of bodies and
9 some that apply to only certain types, based on the definitions
10 set forth in the statute.

11 CHAIRWOMAN SOVELL: Mr. Blair, have we ever had this
12 issue come up for this type of entity in the past?

13 MR. BLAIR: We have not had this issue come up before.
14 I think Ms. Olson is correct that there are some provisions of
15 the open meetings law that apply only to the state in terms of
16 1-25-1.3, it talks about how state entities give notice, which
17 is slightly different than how what I will call local political
18 subdivisions or bodies give notice. 1-25-1.4 talks about the
19 state entities are required to post on a website, on the boards
20 and commissions website, and the provision she referenced
21 regarding minutes also only applies to the state.

22 The rest of the provisions, and Ms. Olson, correct me
23 if I'm wrong, but I believe the rest of the provisions apply
24 both to the state and to local government political -- or
25 public bodies. I will highlight 1-25-1.1 is the statute that

1 talks about local government providing notice. I don't know if
2 the notice is so much an issue in this case, as I read the
3 state's attorney's referral, but I will highlight that, that
4 that is the distinction between those two statutes in terms of
5 the local public body giving notice and 1.3, the state. The
6 other provisions, except those I noted, would apply equally to
7 both local government and state government.

8 CHAIRWOMAN SOVELL: That's how I was reading that as
9 well. I think we still have the notice requirements there. So
10 circling back to whether or not we have a violation here,
11 again, for the complainant, I think there was broader concerns,
12 broader requests for some type of action. We focus
13 specifically on whether we have an open meeting violation. And
14 I will stop talking and let the other commissioners join in at
15 this time. Not all at once.

16 I was getting a little bit bogged down on the
17 statutes, but I do think we still have those notice
18 requirements there and whether or not we have taken an official
19 action without the requisite notice, to boil it down more
20 simply, I think, and if we are looking at the state's
21 attorney -- I'm going to go back to the complaint itself.

22 MR. HOFFMAN: I think we can start with 34A-5-14, any
23 sanitary district established under this chapter is a
24 governmental subdivision of the state and a public body. The
25 requirements are strictly applicable.

1 CHAIRWOMAN SOVELL: So the remaining issues sent over
2 was obtaining of the bank loan of \$200,000 on or about January
3 4, 2022, through the Black Hills Federal Credit Union without
4 taking formal action at a formal meeting, in violation of the
5 bylaws and the potential violations. The assertion made by
6 counsel for the sanitary district was that they don't need to
7 have that as a documented vote, that there was affirmative
8 indication that they would execute that, but there is nothing
9 in those minutes that would approve the execution of the note
10 or that would really let the public know that they were going
11 to step in and obligate potentially members of the public for
12 \$200,000.

13 MR. HOFFMAN: If the statute that I just read,
14 34A-5-14, states that they are a public body, a governmental
15 subdivision of this state and a public body, my view of that is
16 they are under the same open meeting laws as any other public
17 body would be, meaning there has to be notice given of a
18 meeting. The decisions made by that board need to be in the
19 same manner as decisions made by the commissions we have been
20 talking about all day, minutes published and pretty much
21 everything under 1-25. Maybe I'm missing something, I
22 certainly could be.

23 MS. HOFFMAN: I would agree the rules apply. The way
24 the attorney for the sanitation district described the nuances
25 with the language and how Mr. Blair explained it with the

1 definitions section that applies in 1-25-12, and as you
2 indicated, a public body, a public subdivision, I think at a
3 minimum, we are talking 1-25-1.1 certainly applies. They
4 should have provided public notice with the proposed agenda.

5 I think when you get into some of the other ones that
6 were pointed out, 1.3 applies only to state, 1.4 to the state,
7 3 to the state, but I think here, as Mr. Blair pointed out, we
8 are specifically talking about 1-25-1.1, which applies to, I
9 believe, the Green Valley Sanitation District.

10 MR. HOFFMAN: I understand there are -- I don't have
11 it pulled up here, but there is the one statute talking about
12 that sanitation districts, sanitary districts have the right to
13 make their own policies. County commissions have the right to
14 make their own policies too, a lot to do with how long to let
15 somebody talk during the public comment section, how their
16 meetings are ran, those are all policy decisions. That's
17 always how I have viewed the right to make those policies. I
18 don't think it's a policy decision whether or not you have to
19 hold a vote on spending \$200,000 of taxpayer money. That is
20 outside the realm of policy.

21 MR. SMITH: I believe that statute is 34A-5-24 that
22 you are referring to.

23 MR. HOFFMAN: Correct.

24 MR. SMITH: They shall adopt policies and regulations.

25 CHAIRWOMAN SOVELL: The two legal issues that were

1 presented over by the State's Attorneys Office was whether
2 34A-5-24 requires the trustees to still vote on the record in
3 an open meeting, and then the second was whether the Green
4 Valley Sanitary District violated open meeting laws by
5 obtaining a bank loan without a vote at the formal meeting of
6 the board.

7 So I think number one, what I'm hearing from you all
8 is that we still believe that they must have the public vote
9 for the actions they are taking and they can't set policies
10 that we are going to hide behind and say no, we don't have to
11 disclose what it is we are doing. That's probably a poor way
12 of phrasing that. But I do think that they should have the
13 public vote like the other public bodies.

14 And I guess maybe before we go into having a lot of
15 discussion or motions on that, I would give both sides a chance
16 to respond as to why I'm wrong in that assessment. We will
17 start with complainant. Did you have anything you wanted to
18 add with respect to whether or not a vote is required?

19 MR. MYERS: Yes, as far as I'm concerned, yes.

20 CHAIRWOMAN SOVELL: I presumed that was the case, and
21 I wanted to be fair to both sides. Ms. Olson, help us out
22 there on that with respect to your position.

23 MS. OLSON: Your Honor, you look at the affidavits
24 from the board members that were involved at the time that the
25 loan was taken. It was clear that it was discussed at public

1 meetings and that there was consensus amongst the board. They
2 may not have documented a formal vote, but it was part of the
3 public discussion.

4 There was notice that it was being discussed, and so
5 even if -- we are not saying they are not subject to the open
6 meetings laws as a blanket matter, we are saying that there are
7 a few particular sections which apply only to the state. But
8 there is also the general compliance that this discussion about
9 this took place at a public meeting, there was notice that that
10 discussion was going to occur, and there was consensus among
11 the board they should take that action.

12 MR. HOFFMAN: I want to ask -- I'm not questioning
13 whether discussion was had or not, but was a motion made and a
14 vote taken on whether to take this loan out or not?

15 MS. OLSON: There is no documentation in the minutes
16 of a vote and a motion taken. This far after the fact, when
17 speaking with the board members, they could not recall if a
18 specific vote was taken.

19 MR. MYERS: Can I address that please?

20 CHAIRWOMAN SOVELL: Yes, we will allow you to do that.

21 MR. MYERS: I'm sorry, I couldn't quite hear you.

22 Before I filed this complaint, I went to the secretary,
23 Lorretta Jangula, and I asked her to dig through her personal
24 notes that she takes during every meeting and asked if she
25 could find anyplace at all where there was a motion or

1 resolution or a vote, and in her personal notes, she could not.
2 She said all of her notes reflect exactly what's in the meeting
3 minutes; so there was never a vote.

4 MS. OLSON: I would just respond that there is an
5 affidavit from Lorretta Jangula that's been submitted, and I
6 would refer the Commission to that affidavit.

7 CHAIRWOMAN SOVELL: Really I think it comes back to
8 us. If we are not requiring of this type of body an
9 affirmative action that would support subsequent execution of
10 financial obligations, how do we know? How does the public
11 know? How do we track monies that are coming in of public
12 funds if we don't have some way to say you are authorized to
13 proceed in this fashion?

14 MR. SMITH: Yeah, I'm still -- I think that the
15 argument by counsel, Ms. Olson, is compelling that in fact
16 1-25-3 doesn't apply to political subdivisions, that it only
17 applies to the state, as defined in 1-25-12, perhaps not quite
18 on the nose for what we are discussing, I believe what that
19 really stands for then is that minutes aren't absolutely
20 mandatory to be kept by political subdivisions or at least not
21 in the same way that it expressly is for the state under
22 1-25-3. And we would certainly have a lot easier time making
23 this decision if we had minutes that articulated whether or not
24 a vote was cast.

25 CHAIRWOMAN SOVELL: So my question then, is this an

1 issue for our legislators to look at to fix versus something we
2 can probably address?

3 MR. SMITH: I think that's a good question. I'm
4 struggling to decide whether or not -- I believe that this is
5 within our wheelhouse in the sense it was sent to us properly
6 by State's Attorney Roetzel. The question now for us becomes
7 whether or not there is enough information for us to make a
8 determination as to the two questions that were brought forth,
9 certainly as to the second one, which is probably the one we
10 are dealing more on now.

11 MS. HOFFMAN: It looks like Exhibit -- there are some
12 meeting minutes attached; so it's something that the body does
13 in fact keep to an extent. And there is talk in the minutes
14 about discussion being had about obtaining a loan but nothing
15 to indicate that there was formal action taken on it. I don't
16 know how often the board meets, but they appear to be rather
17 sporadic.

18 MR. MYERS: No, the board meets the second Tuesday of
19 every month. I'm sorry, second Wednesday of every month.

20 MR. RUSSELL: This is Lance Russell. I know that
21 there is a requirement for publication of minutes. Does
22 anyone, does counsel for the board know where that requirement
23 is? Because there is a requirement in statute that minutes of
24 public meetings be published in the newspaper. I'm wondering
25 if that applies, if that statute applies in this particular

1 case.

2 MS. HOFFMAN: This is Kate Hoffman. I think that's
3 one of those particular sections that Ms. Olson was arguing
4 applies only to the state, that was in 1-25-3, that the state
5 shall keep the detailed minutes.

6 MR. SMITH: To add to that, I found --

7 MR. RUSSELL: I am talking about publication of
8 minutes. I know there's a specific statute that requires
9 publication.

10 MR. SMITH: I believe Mr. Russell may be referring --
11 this only I believe applies to municipalities, but 9-18-1
12 requires municipalities to publish, within 12 days, minutes of
13 their governing body. Does that exist for other political
14 subdivisions?

15 MR. HOFFMAN: I believe under counties, there's a
16 similar statute about pretty much the same thing that says a
17 county commission has to publish their minutes within a certain
18 time frame after the commission meeting.

19 CHAIRWOMAN SOVELL: There is a distinction there
20 between those political subdivisions and these other
21 statutorily authorized boards, not all of them are required for
22 publication.

23 MR. MYERS: Can I briefly address the talk about the
24 vote?

25 CHAIRWOMAN SOVELL: Sure, go ahead.

1 MR. MYERS: In both affidavits, one by Jason Reitz and
2 the other by Leonard Lucky Lee, item number three says, I do
3 not recall if a specific vote was held on approval of the loan
4 at Black Hills Federal Credit Union, but I recall that it was
5 discussed at several regular board meetings and the trustees
6 agreed that they needed this to pay for engineering costs. So
7 both of them have the exact same quote and they both say they
8 do not recall a specific vote on the matter.

9 The minutes have been -- I talked to Green Valley
10 Sanitary District yester -- what is today -- I talked to them
11 on Friday about the minutes, and they had the minutes posted
12 from the year 2021 up to date, and the minutes are every month,
13 except for this last month of November. They were posted
14 there, they said they had to take the first two years off
15 because they weren't ADA approved. So now all they have is
16 2023 through 2024 or current. So the minutes have been regular
17 and the minutes have been accurate.

18 CHAIRWOMAN SOVELL: What do we think, board?

19 MR. HOFFMAN: I can't find anything that requires
20 minutes to be published for them. However, if they are
21 considered a political subdivision, I think a vote would
22 certainly be required to make any decisions. But we don't know
23 for sure if that vote was made or not. The only -- there's
24 nothing saying that there was more than saying there wasn't, I
25 guess.

1 CHAIRWOMAN SOVELL: What their later proclamation was
2 was execution of the notes proves what their decision was, so I
3 don't know that I can buy into that, because I think it's
4 setting a very scary precedent for future expenditures of
5 public monies. So I'm inclined to find that they should have
6 record of votes for those expenditures, and if they are to do
7 so, it would be a violation, but I think we do need
8 clarification from the legislature.

9 MR. HOFFMAN: I would agree.

10 CHAIRWOMAN SOVELL: I say it with the understanding of
11 Ms. Olson's argument, and I'm mindful of that, and somebody can
12 probably come back in later and tell me I assessed this in a
13 manner they didn't want me to. But I'm concerned that we open
14 a door we don't want to open, if we don't say we have to have
15 that vote.

16 MR. SMITH: Do we have a precedent as to the standard
17 that we are to use as it relates to burden of proof? That also
18 could be important to whether or not we decide or who has such
19 burden.

20 MR. BLAIR: This is Steve Blair. I don't recall prior
21 precedent establishing specific burden of proof. I say that
22 readily admitting I don't have all of the prior decisions
23 memorized.

24 MR. HOFFMAN: What are you even here for then?

25 (Laughter)

1 CHAIRWOMAN SOVELL: Historically we are a body where
2 we have operated by majority votes and so this is a difficult
3 situation. I think that I'm going to -- I think I'm going to
4 circle the table with the two questions that are there. This
5 isn't a vote, but just say what do you think? I shouldn't say,
6 because that's not our legal standard, *do you think*. I think a
7 lot of things that may not be in compliance with statute. Are
8 they required to vote on the issue? Anyone comfortable at all
9 making a motion as to whether or not they are required to vote
10 on the issue?

11 MR. SMITH: I'm not.

12 MR. HOFFMAN: 34A-5 has quite a bit of stuff in there
13 that it says they are required to vote on. This isn't one of
14 them, frankly, which I think needs to be legislatively fixed.
15 I can't find anything in 34A-5 that specifically says a vote is
16 required. However, I certainly think they are under the
17 purview of 1-25, but I'm also not so sure that really gets us
18 to where we would need to be anyway.

19 CHAIRWOMAN SOVELL: If we don't address number one,
20 can we address number two as to whether they violated the open
21 meeting rules by obtaining that bank loan without a formal vote
22 at a formal meeting? On number two, I view it they all were in
23 attendance or gathered for purposes of executing those
24 documents at the bank, that's a meeting.

25 MR. HOFFMAN: I have too much going on in my head

1 right now, so I'm just going to ask, I know this has been
2 talked about. There was notice given -- the loan itself was
3 discussed several times at several different meetings. Was
4 notice given of those meetings?

5 CHAIRWOMAN SOVELL: Maybe that's a question for --
6 let's start with counsel for the district.

7 MR. HOFFMAN: Yeah, I'll let complainant and
8 respondent answer that here, if you guys would.

9 MS. OLSON: So there's no case --

10 COURT REPORTER: I didn't hear you. I'm not getting
11 this. Have her start over please.

12 CHAIRWOMAN SOVELL: You were cutting out and the court
13 reporter is struggling to get this onto the record. Can I have
14 you repeat that please?

15 MS. OLSON: This discussion item appears on more than
16 one agenda, and those agendas are included with the affidavit
17 of Lorretta Jangula, and the regular process for the board is
18 to post those agendas outside of the meeting room.

19 MR. HOFFMAN: Is that -- I don't know if this would
20 have any bearing or not, this is just me asking questions.
21 Standard for at least a county commission is what I'm going to
22 go back to here, is that 24-hour notice rule. Would that --
23 again, I don't know if this has any bearing at all, but just
24 for interest's sake, how long before the meeting are those
25 notices posted on the door?

1 MS. OLSON: I believe it's generally 72 hours.

2 MR. HOFFMAN: Here is my overall thought on this one.
3 I think there is a notice requirement. If that notice was
4 given, frankly, if it's 72 hours, it's much more in advance
5 than is necessary. The public has the right to come in and
6 voice their opinion on these. Whether they do or not, that is
7 up to the public.

8 I can't find anything in the statutes that requires,
9 number one, a vote to be made, or number two, minutes to be
10 recorded from those meetings or published, for that matter. I
11 said it before, could I be missing something? Absolutely. If
12 I am, this I think will have to be readdressed if so passed.

13 But if there's not a requirement for a vote and there
14 is not a requirement for minutes or for them to be published,
15 granted I don't personally agree with that, but that doesn't
16 matter because we have statutes that we have to follow, I don't
17 think a violation can be found.

18 MR. BLAIR: If I may. This is Steve Blair again, and
19 I only -- I'm not a commissioner so I try to stay out of your
20 discussions. I only bring this up, as I sense some difficulty
21 in reaching a decision or consensus on this. While I don't
22 have all the decisions memorized, I will throw out a few points
23 from the precedent that I am aware of that maybe hopefully will
24 help guide your thoughts on this.

25 The previous iterations of this Commission have held,

1 and you are certainly not bound to those in your interpretation
2 of statutes, but have held that 1-25-1 and 1-25-1.1 together
3 working in concert require notice to the public of official
4 actions or discussions that will be taken by a public body and
5 that all official actions of the public body, any public body,
6 take place at a properly noticed public meeting.

7 So as I listen to this discussion or view this
8 complaint, I think the question is, for the Commission is, it's
9 similar to what the state's attorney presented, was the taking
10 out of that bank loan an official action that should have been
11 noticed for a public meeting and taken in an open public
12 meeting, under those two statutes.

13 I think that's the previous precedent. I don't have
14 the specific decisions of this Commission that I can point to
15 that say that, but I know that those are out there, the
16 previous precedent of the Commission in terms of how those
17 statutes are interpreted together.

18 There is no specific language in the open meeting
19 statutes that say, you have to take a vote at an official
20 meeting, but I think those two statutes have been interpreted
21 together to require that, that a public body can only act
22 through its official actions of a quorum and that quorum then
23 requires a public meeting and so any official action of a
24 public body has to occur at a public -- properly noticed public
25 meeting.

1 CHAIRWOMAN SOVELL: And me being the longest veteran
2 on this, I should remember the references you are making, but
3 to be honest, I don't. My gut reaction, as it was before we
4 went through a lot of this other discussion, that is we have to
5 have something there that gives the public notice that they
6 have the authority to borrow those funds. I think that it's --
7 I think we would be -- we would be doing a disservice if we say
8 something other than that.

9 MR. HOFFMAN: I agree there.

10 MR. SMITH: I agree as well. I think for me the
11 question still remains to whether or not there is authority for
12 us to go ahead and say that we should follow what's best for
13 public policy. That still leaves me with a lot of concern.
14 I'm not sure I feel comfortable that there is.

15 MR. RUSSELL: Lance Russell here. I would note in
16 1-25-2, the first paragraph after all of the subsections,
17 however, any official action concerning the matters pursuant to
18 this section shall be made at an open official meeting. Does
19 that by implication require -- that's I think the question, the
20 seminal question here.

21 I guess at this point I'm a little bit hesitant, like
22 the rest, to make any kind of a decision. Is there any
23 precedent for us just holding it in abeyance and getting a
24 little bit more legal research available to the Commission
25 before we take any action at a subsequent meeting?

1 MR. BLAIR: This is Steve Blair again. There is no
2 precedent for that, but I'm also not aware of anything that
3 would prevent it.

4 MR. HOFFMAN: I think we always, as a public body
5 ourselves, there's always the right to make a motion to move
6 this to the next agenda. Personally, I would like to do more
7 research on this, not sitting here at the same time trying to
8 make a decision and listen to the other discussion going on.

9 CHAIRWOMAN SOVELL: I think in the interest of time,
10 if somebody is inclined to motion to table this to the next
11 regular meeting, I will certainly accept that motion.

12 MR. HOFFMAN: I will make that motion.

13 MR. SMITH: I would second.

14 MR. RUSSELL: I'll second.

15 CHAIRWOMAN SOVELL: We beat you to the second on the
16 floor; so we will take the motion and the second here. All in
17 favor of the motion signify by saying "aye."

18 (Motion passed unanimously.)

19 MR. HOFFMAN: I'm sorry, I know you came to this
20 meeting today hoping to get a decision, but I think it's pretty
21 clear that there's a lot going on here. And there is just more
22 that we need to be able to take into account before we can make
23 the right decision, because ultimately that is what we want to
24 do. The last thing I want to do is have this board make a
25 decision and in two weeks from now look at something and say,

1 boy, we really screwed this up. That would not be a good thing
2 for anybody.

3 CHAIRWOMAN SOVELL: Before I forget, I'm going to call
4 for any votes in opposition to the motion. Anybody opposed to
5 having this matter tabled, signify by saying "aye." Hearing
6 none, the motion passes by unanimous vote. And we will keep
7 moving forward on the agenda. We will circle back on this one
8 at the next noticed meeting.

9 MR. MYERS: Can I add one thing to your investigation?

10 CHAIRWOMAN SOVELL: I think we have motioned to table
11 it. We have closed the oral presentation. I think just in the
12 interests of time, we are probably going to keep moving
13 forward. But we will review all the materials that we have.

14 MR. MYERS: Thank you very much.

15 CHAIRWOMAN SOVELL: Then we have next -- anyone need a
16 break?

17 MR. HOFFMAN: Five minutes.

18 CHAIRWOMAN SOVELL: Let's take a 10-minute break here.

19 (Whereupon, the proceedings were concluded.)
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C E R T I F I C A T E

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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