

PROCEEDINGS OF THE CITY COUNCIL
Rapid City, South Dakota
July 29, 2009

Pursuant to due call and notice thereof, a special meeting of the City Council of the City of Rapid City was held at the City/School Administration Center in Rapid City, South Dakota on Wednesday, July 29, 2009 at 11:30 A.M.

The following members were present: Mayor Alan Hanks and the following Alderpersons: Sam Kooiker, Karen Gundersen Olson, Ron Kroeger, Lloyd LaCroix, Ron Weifenbach, Bill Waugh and Deb Hadcock; and the following Alderpersons arrived during the course of the meeting: Patti Martinson; and the following were absent: Aaron Costello and Malcom Chapman.

Staff members present included Finance Officer Jim Preston, City Attorney Jason Green, and Administrative Coordinator Amber Sitts.

Scott Swier gave a presentation regarding the changes in the open records law. He reviewed the recent history of open government, Senate Bill 147 and SDCL 1-27 the Presumption of Openness, and he explained that the Presumption of Openness says that every record held by government is open unless closed by another statute, ordinance or rule. The public can examine public record during regular office hours and obtain copies with respect to the Federal Copyright Law. The law also requires that the government entity maintain a file of denials, which would be available upon request by the public.

At 11:50 A.M., Alderman Martinson entered the meeting.

Swier listed numerous records not subject to the Presumption of Openness, and he discussed the deliberative process privilege. Responding to Hadcock, Swier indicated that many legal scholars and commentators believe that the executive privilege falls under the deliberative process privileges umbrella and said the majority of states would find this as well. He explained that it is reasonable to make an analogy that the Mayoral position is similar to the Governor and the City Council is similar to the Legislature. He said the Governor has the ability to withhold deliberative process documents from the Legislature, so an argument could be made that this ability extends to a Mayor and City Council. Swier recommended reading a Missouri Law Review article on deliberative process, and after further questions and conversation about the issue, he suggested asking the City Attorney or Attorney General's Office for an official opinion. Swier briefly discussed the redaction of information and confidential criminal justice and criminal history information. He explained that there is no civil or criminal liability for any public official who denies or produces a document in error, and he also mentioned the public records dispute resolution procedure.

Kooiker pointed out that Iowa state law allows boards to keep minutes and recordings of their executive sessions, so he asked if a closed session is considered a deliberative process. Swier said the deliberative process does not come into play when you go into executive session. He said South Dakota law does not require minutes or recordings, but this could be changed by legislature if they think it is good public policy. He confirmed that the legislative process would be correct manner to go about it. He also clarified that an individual governmental entity could make a public policy decision, but he is not aware of any entity in South Dakota who takes or retains minutes or recordings of executive session. Kooiker expressed his interested in seeing this go through legislature so records can be kept for future reference. He also mentioned that he added an item on the Legal and Finance agenda to ask the Council to encourage the

Municipal League to work on this issue as well. Responding to LaCroix, Swier confirmed that personal financial information on an application would not be subject to the Presumption of Openness for privacy reasons. Swier then encouraged Kooiker to talk to the Legislators but said he will share his thoughts with the Attorney General. Hadcock confirmed that Swier will email the Council information on the previously discussed Missouri Law Review.

As there was no further business to come before the Council at this time, the meeting was adjourned at 12:36 P.M.

ATTEST:

CITY OF RAPID CITY

Finance Office

Mayor

(SEAL)