

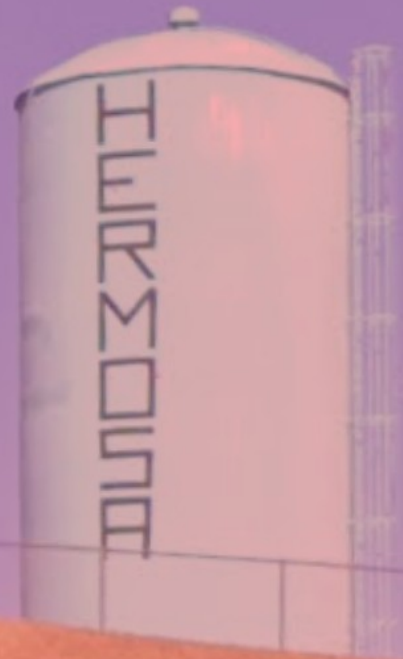
# City Attorney: Appointment, Payment & Dismissal Procedures

Third Class Municipality – South Dakota  
Statutory Overview & Best Practices



# Current Practices

- Informal motions and precedent to appoint, direct, and establish authority of the City Attorney
- City Attorney is identified in the ordinances as an official position, but no ordinances exist governing the scope of the City Attorney
- City Attorney compensation is not outlined within any resolution or ordinance



# Dillon's Rule

Under Dillon's Rule, supported by the SDLRC and the SD Supreme Court, municipalities only have powers that are:

- Expressly granted by statute or constitution.
- Necessarily or fairly implied from those express powers.
- Indispensable to the municipality's declared purposes.

**To summarize, if there's doubt about whether the municipality or its Officers have a specific power, and it is not clearly supported by ordinance, statute or law, the answer is NO.**

# Statutory Requirements

## Applicable Statutes

- SDCL 9-14-3: “Such officers as needed and provided for by ordinance shall be appointed. Each appointive officer of a municipality governed by a mayor and common council shall be appointed by the mayor with the approval of the council, and in other municipalities, each officer shall be appointed by a majority vote of the members elected to the governing body, except as provided in the city manager law and subject to the provisions of the civil service applying to employees, police, and firefighters. Such officers shall be appointed annually or at intervals determined by the governing body.”
- SDCL 9-14-23: “The governing body of any municipal corporation may contract for legal services or employ an attorney under such terms and conditions as the governing body shall deem proper. Any contract for legal services with an attorney shall be made by ordinance or resolution. Such contract shall set forth the compensation to be paid and the specific services to be rendered.”

# Appointment Best Practice

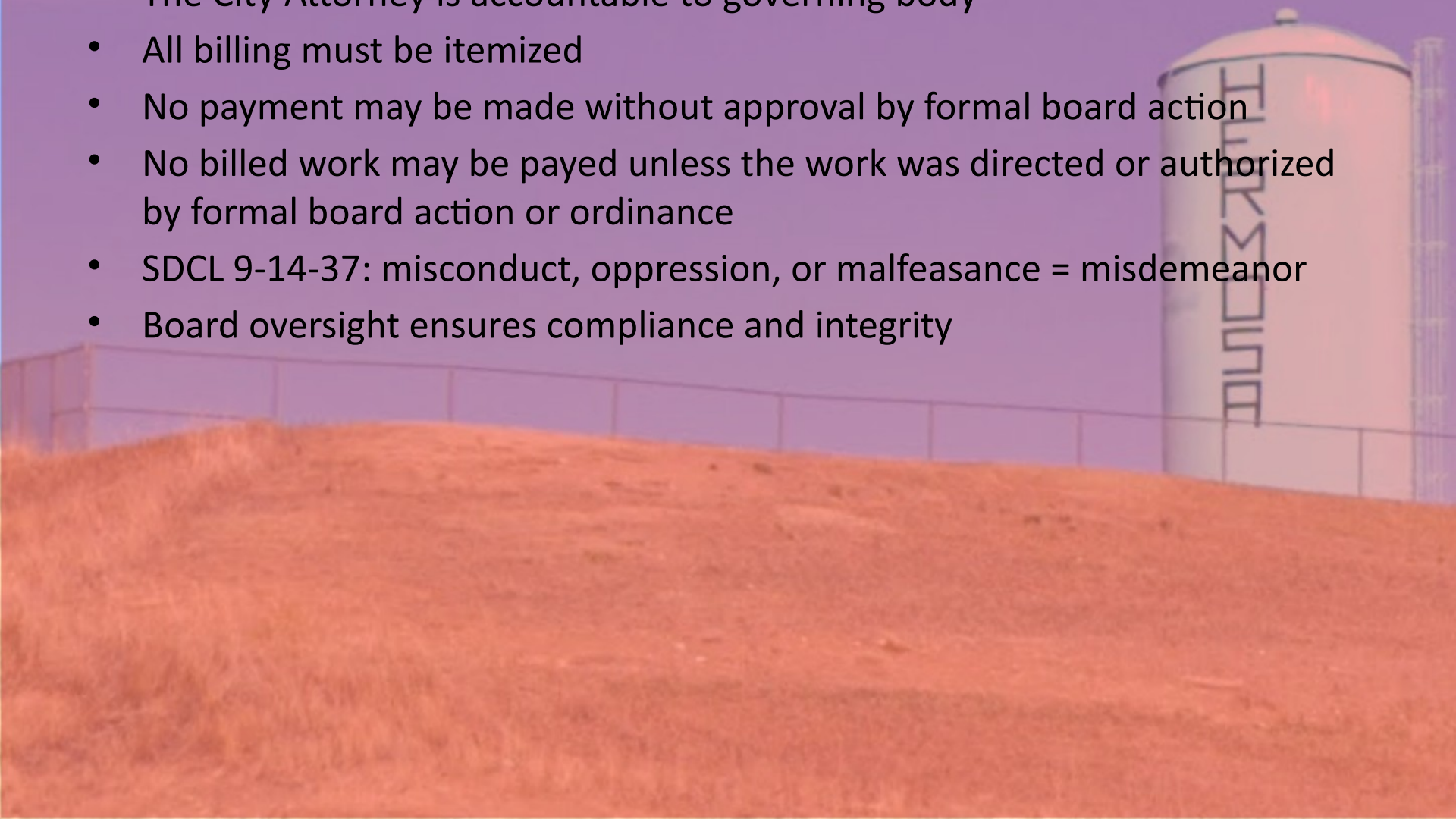
- Nominee is identified and nominated by board member(s)
- Nominee presents their qualifications and other relevant information in an open meeting
- Appointment may be made by a motion, but does not imply agreement to compensation
- Unlike other contractors and employees, compensation agreements require an ordinance or resolution. Therefore, discussions should be **open to the public**, as with any ordinance or resolution.
- Other third class municipalities tend to declare through ordinance that legal compensation will be passed by resolution, and then review and pass a resolution annually.

# Scope of the City Attorney

- Applicable Statute
- SDCL 9-14-22: “When required by the governing body or any officer of the first and second class municipality, the city attorney shall furnish an opinion upon any matter relating to the affairs of the municipality or the official duties of such officer; conduct the prosecution of all actions or proceedings arising out of the violation of any ordinance; and perform such other professional services incident to his office as may be required by ordinance or directed by the governing body.”
- Third class municipality not obligated to appoint a City Attorney
- Ordinances identify City Attorney as a position, but do not require one or limit the number of the same
- **With consideration for Dillon’s rule, and the fact that there are no ordinances in place establishing the scope of the City Attorney, no action may be taken by the City Attorney unless explicitly authorized or directed to do so by a formal board action.**

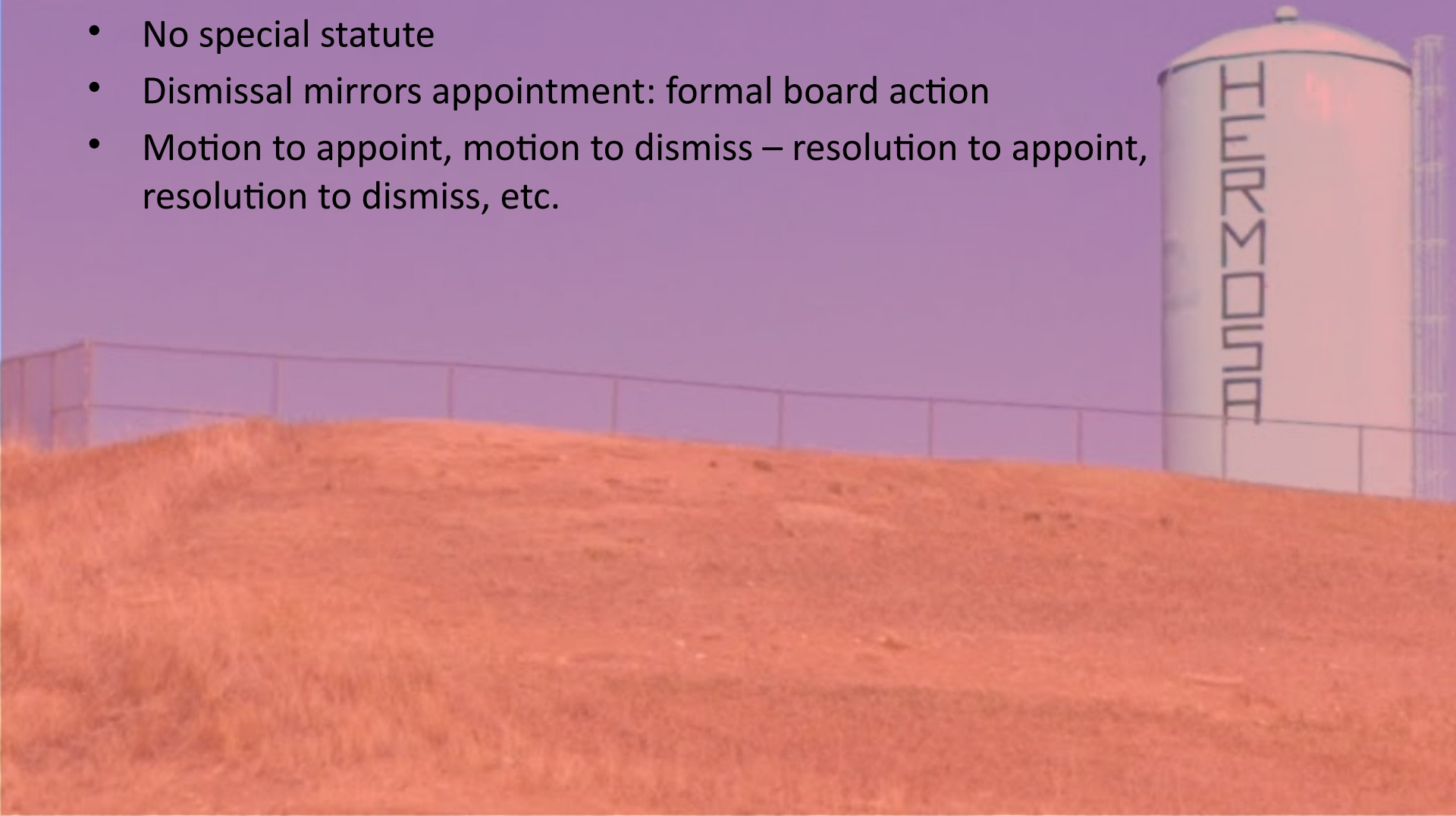
# Oversight & Conduct

- The City Attorney is accountable to governing body
- All billing must be itemized
- No payment may be made without approval by formal board action
- No billed work may be payed unless the work was directed or authorized by formal board action or ordinance
- SDCL 9-14-37: misconduct, oppression, or malfeasance = misdemeanor
- Board oversight ensures compliance and integrity



# Dismissal / Non-Renewal

- No special statute
- Dismissal mirrors appointment: formal board action
- Motion to appoint, motion to dismiss – resolution to appoint, resolution to dismiss, etc.



# Key Takeaways

- Lack of ordinances governing scope and compensation is exposing the Town to financial and legal risks
- Moving forward, all City Attorney matters should require formal board action to be valid and billable
- Drafting of ordinance establishing scope and authority of the City Attorney should be a high priority
- No further legal relationships may be considered contractual unless supported by resolution or ordinance

