

June 22, 2009

STATE OF SOUTH DAKOTA

OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN MEETING) FINDINGS OF FACT,
COMPLAINT 08-02, KINGSBURY) CONCLUSIONS OF LAW
COUNTY COMMISSION) AND REPRIMAND

The Complaint in the above entitled matter was referred to the Open Meetings Commission by the Kingsbury County States Attorney under SDCL 1-25-6; the State's Attorney having received a notarized complaint filed under oath by Jerry Ellingson, a County Commissioner.

The Ellingson Complaint alleges that three members of the Kingsbury County Commission met and participated in a meeting on June 23, 2008, without posting an agenda or otherwise making the meeting open to the public or to other Commissioners. The State's Attorney referred the matter to the Open Meetings Commission for disposition and, in so doing, asserted that SDCL 1-25-1 and SDCL 7-8-16 were at issue.

The Kingsbury County Commission consists of five Commissioners. On June 23, 2008, three Commissioners met, which is clearly a quorum. The three Commissioners acknowledge that they met without causing a notice to be given to other county commissioners and without causing an agenda to be posted as required under SDCL 1-25-1. The three Commissioners assert, however, that they met solely for purposes of receiving educational information from the County Auditor on how revenue was received by Kingsbury County. It is undisputed that no votes were taken during this meeting.

As set forth below, a reprimand is warranted.

FINDINGS OF FACT

1. Kingsbury County and its Board of Commissioners constitute a political subdivision of the State of South Dakota as referred to in SDCL 1-25-1. The Kingsbury County Commission consists of five members.

2. A quorum of the Kingsbury County Commissioners (three commissioners) met on June 23, 2008 without having prepared an agenda, without posting notice of the meeting, and otherwise failed to conduct a public meeting.

3. It is undisputed that no agenda was prepared or posted and that the three Commissioners did not otherwise treat the meeting as a public meeting.

4. The three Commissioners assert that they met with the Kingsbury County Auditor to obtain information on how Kingsbury County receives its revenue and that such discussion was an educational meeting. They point out that no specific budget items were discussed and that no votes were taken. However, the discussion was not of how money is raised by counties generally, but focused on how Kingsbury County's money is raised.

5. Commissioners Don Lee and Jerry Ellingson were not present at the meeting. Commissioner Ellingson asserts he had no notice of the meeting and that the meeting was conducted in such a manner as to specifically exclude Ellingson and Lee.

CONCLUSIONS OF LAW

1. Kingsbury County is an entity subject to the provisions of the open meetings law found at SDCL Chapter 1-25 and, further, is subject to SDCL 7-8-16 which also requires all county commission meetings to be conducted in a public manner.

2. Under SDCL 1-25-1.1, Kingsbury County is required to prepare and post notice of its meetings, with a proposed agenda, at least 24 hours prior to any meeting where a quorum will be present and official business will be discussed. Although the three Commissioners assert that the meeting was conducted for informational purposes only, it is clear that the subject matter involved obtaining information regarding the manner and method that revenue is received in the county treasury. The County Commission is in charge of the county treasury and is the entity that develops and carries out the budget for the county. In other words, discussion of revenue is official county business.

3. Although no decisions were made and no votes were taken during the June 23, 2008, meeting, the meeting involved official business. The informational purposes here were not general in nature and were specific to Kingsbury County and its specific sources of revenue.

4. The three Commissioners assert that they had a good faith understanding of the Open Meeting Law that allowed for these informational type sessions. On the other hand the Complainant argues that the meeting was purposefully conducted so as to exclude one or more other county Commissioners. SDCL 1-25-1 and SDCL 1-25-1.1 do not, however, contain

any language applying to good faith or purpose and intent of the Commissioners. Accordingly, the issues of good faith and/or purposeful conduct do not bear on the decision in this matter and this Commission makes no Finding of Fact or Conclusion of Law in that regard.

5. In conducting the June 23, 2008, meeting the three county Commissioners were in violation of SDCL 1-25-1 and SDCL 1-25-1.1 and should be reprimanded for such violation.

REPRIMAND

The Kingsbury County Commission, Commissioners Schoenfelder, Lee, and Madison are hereby publicly reprimanded for its violation of the South Dakota Open Meetings Law.

The foregoing decision is issued by a majority of the Open Meetings Commission, Commissioners Beck, Reedstrom, and Steele. Commission Chairman Brenner and Commissioner Rothschadl dissent.