

December 31, 2006

STATE OF SOUTH DAKOTA

OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN MEETING)
COMPLAINT 06-05,)
MELROSE TOWNSHIP)

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND REPRIMAND

Lisa Rothschadl, Commission Member

INTRODUCTION

South Dakota has enacted a statute requiring meetings of political subdivisions of the state, including all related boards, commissions and other agencies to take place in a public forum, SDCL Ch. 1-25. Pursuant to SDCL 1-25-1.1, these public meetings shall only be conducted after proper notice is made with the proposed agenda. This notice is to be provided to the public at least twenty-four (24) hours prior to the meeting. A violation of these rules is a Class 2 misdemeanor.

FINDINGS OF FACT

On November 15, 2006, the Open Meetings Commission heard oral presentations on the matter of the Complaint of Jerald Zubke submitted to the Grant County States Attorney for a violation of the open meetings law. This matter came before the Commission following the filing of a verified complaint dated September 22, 2006 and signed by Jerald Zubke. The complaint specifically alleged violations of the open

meeting laws found at SDCL Ch. 1-25 and the township meeting laws found at SDCL Ch. 8-3.

The matter complained about by Jerald Zubke involves a Grant County Commission meeting held on July 5, 2006. According to the evidence presented, three (3) Melrose Township Supervisors met with the Grant County Commission at their regular meeting to discuss a culvert replacement issue. Following this discussion, the Grant County Commission authorized the replacement of the Melrose Township culvert. According to SDCL 31-14-27, said action by the Grant County Commission requires the township to reimburse the county up to five hundred dollars, and any cost in excess of five hundred dollars shall be paid by the County. The Grant County Commission meeting was properly noticed to the public pursuant to SDCL 1-25-1.1 with one item on the agenda listed as Melrose Township.¹

DISCUSSION

The issue presented to the Open Meetings Commission in this matter is whether the township supervisors were required to post a public notice for their meeting with the Grant County Commission on July 5, 2006 when member(s) of the Melrose Township board expected to attend the Grant County Commission meeting.

According to SDCL 1-25-1.1, the notice of meeting is required for all public meetings including special or rescheduled meetings to the extent that circumstances permit. It is apparent in this matter that the Melrose Township Board knew they would be meeting with the Grant County Commissioners for purposes of this culvert

¹ According to the Grant County Auditor, this matter was placed on the agenda at the request of one of the Township supervisors.

replacement discussion. Furthermore, it was the township board's decision to meet with the Grant County Commission and that decision was made sufficiently in advance of the actual meeting to allow the Auditor to place this on the agenda. Therefore, it would appear a public notice by the Melrose Township Board was required pursuant to SDCL 1-25-1.1. The South Dakota law² at issue in this matter does not distinguish between meetings where the Board intends to take official action and meetings where no official action is taken as proposed by the Melrose Township Board in their written submissions to this Commission. If the South Dakota legislature intended to differentiate between the two, the legislature could have done so with appropriate language.

The Open Meeting Commission hereby agrees that to construe the open meeting law to require notice of a meeting that was not called or planned by the organization, and which the organization only passively attended would lead to an absurd result. However, that was not the facts as presented in this case. The Melrose Township Board asked to be on the county's agenda for a matter that by law incurs an expense to the township.³ Although the motion was passed by the Grant County Commission, the motion was made at the request of the Melrose Township Board. Therefore, the Melrose Township Board had a duty to provide the requisite notice in this matter.

CONCLUSION

² SDCL 1-25-1.1 provides: All public bodies shall provide public notice, with proposed agenda, at least twenty-four hours prior to any meeting, by posting a copy of the notice, visible to the public, at the principal office of the public body holding the meeting, and, for special or rescheduled meetings, delivering, in person, by mail or by telephone, the information in the notice to members of the local news media who have requested notice. For special or rescheduled meetings, all public bodies shall also comply with the public notice provisions of this section for regular meetings to the extent that circumstances permit. A violation of this section is a Class 2 misdemeanor.

³ SDCL 31-14-27 requires the township to reimburse the County up to \$500 for the placement or replacement of a culvert.

This Commission hereby issues its decision finding that the Melrose Township Board has violated the public notice of meeting required by SDCL 1-25-1.1 and hereby reprimands the Melrose Township Board for their actions for failing to provide the legal notice required when they knowingly appeared as a quorum before the Grant County Commission on July 5, 2006.

Commissioners Beck, Brenner, Foley, and Steele concur.