

August 12, 2008

**STATE OF SOUTH DAKOTA  
OPEN MEETINGS COMMISSION**

IN THE MATTER OF OPEN MEETING )	FINDINGS OF FACT,
COMPLAINT 07-01 )	CONCLUSIONS OF LAW
BLACK HAWK FIRE DISTRICT )	AND REPRIMAND

Mark A. Reedstrom, Commission member

**INTRODUCTION**

South Dakota has enacted a statute requiring meetings of local governing bodies to take place in public forum, SDCL ch. 1-25. Pursuant to SDCL 1-25-1.1, these 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. Furthermore, the required notice shall be posted in a location visible to the public at the principal office of the public body holding the meeting. The same rule applies to special meetings to the extent that circumstances permit. Violation of this statute is a Class 2 misdemeanor.

**DISCUSSION AND DECISION**

This matter comes before the Commission under the complaint of Mr. Raymond Reynolds, a concerned citizen and resident property owner in the Black Hawk Fire District, in South Dakota. On or about May 21, 2007, the Meade County State's Attorney's Office received a copy of a complaint alleging that the annual meetings of the Black Hawk Fire District were not properly noticed for the years 2006 and 2007, pursuant to the statutory scheme governing rural fire protection districts, found in SDCL ch. 34-31A. Although not specifically alleged, this Commission will examine whether the Black Hawk Fire District violated South Dakota's public meeting laws, SDCL ch. 1-25, et. seq.

## **Summary of Background, Evidence and Testimony.**

The Black Hawk Fire District is a rural fire protection district organized under South Dakota law. The territory forming such district may include land situated in more than one county. Such districts are governed by a board of directors consisting of not less than five residents of the district. Such districts receive tax revenues, grants, and other public resources, and make expenditures necessary to carry out the general fire protection program for the district. Rural fire protection districts are a body politic and corporate subdivision of the State of South Dakota. SDCL 34-31A-16.

The Black Hawk Fire Department is a nonprofit tax exempt organization. The Black Hawk Fire District has organized the Black Hawk Fire Department for fire protection. The district uses its taxing authority to equip, fund, and maintain the fire department to serve the district. Both the fire district and the fire department are governed by boards. Historically, the boards have the same members. The fire district elects its board members at its annual meeting in early March each year. The fire department has not had annual meetings or elections for many years. It is assumed that election to the fire district board constitutes election to the fire department board, although such elections are contrary to the fire department's by-laws.

Prior to the fire district's March 2006 annual meeting, the board's secretary, Robert Mallow, published a notice in the Rapid City Journal (Feb. 27, Mar. 6), and the Meade County Times Tribune/Black Hills Press (Mar. 1, Mar. 4), as follows:

### **ANNUAL MEETING**

**The Black Hills Vol. Fire Dept. will hold its annual meeting March 9, 2006, at 7:00 p.m. at the Black Hills Fire Dept.**

The March 9, 2006, annual meeting was in fact the annual meeting of the Black Hawk Fire District. The secretary-treasurer's financial report concerning the affairs of the district was presented, and the election of the district's board members was held. No fire department election was held. No fire department financial statement was presented.

The record is settled that no notice of any kind was published prior to the March 2007 annual meeting of the Black Hawk Fire District. The secretary-treasurer testified he thought he sent the required notice to the media prior to that meeting, but acknowledges that they did not acknowledge receipt of that notice by proof or ad copy and did not receive a bill for that publication. The 2007 annual meeting of the Black Hawk Fire District was held on March 8, 2007. No notice of any meeting, with proposed agendas, were posted at the principal office of the public body, prior to either the 2006 or the 2007 annual meetings.

### **Applicable Statutes and Law**

#### **34-31A-43. Annual meeting of resident property owners in district - Special meetings - Publication of notice.**

**A regular meeting of the electors who are owners of any interest in real property assessed for taxation in the district and who are residing within the boundaries of a district shall be held in the first quarter of each calendar year and special meetings may be called by the board of directors at any time. The annual election shall be conducted during the regular meeting. Notice of the annual election shall be given by the secretary-treasurer by one publication in a legal newspaper of general circulation in each county in which the district is situated. The meeting shall be held not less than seven days nor more than fourteen days after the date of publication of the notice.**

#### **1-25-1.1. Open Meetings Law - Notice of meetings - Violation.**

**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.**

Based upon the submissions of the parties, and testimony and exhibits offered and received at the November 14, 2007, open meeting commission hearing, the record indicates that the district failed to give proper notice of the annual meeting, pursuant to SDCL 34-31A-43 and SDCL 1-25-1.1, prior to either the 2006 or the 2007 meetings. The published notice provided prior to the 2006 annual meeting was factually incorrect insofar as it referenced the wrong public

body. The notice was also facially insufficient in that it did not contain notice of the annual election, which information was required to be contained in the notice to the local news media. There was a complete failure to adhere to the requisite notice requirements in 2007.

There is an issue whether the Open Meetings Commission has jurisdiction to consider whether SDCL 34-31A-43 was violated, or whether the Commission's authority is limited to SDCL 1-25-1. We believe it is unavoidable to also consider SDCL 34-31A-43, because both statutes must be adhered to under the law. There is nothing conflicting in either of these statutes that would cause a different result in this matter, as both statutes were violated.

### **FINDINGS OF FACT**

1. The Black Hawk Fire District is a related board of a political subdivision of the State of South Dakota as those terms are used in SDCL 1-25-1.

2. That on March 9, 2006, the Black Hawk Fire District held a public meeting without giving proper notice of said meeting as required by SDCL 34-31A-43 and SDCL 1-25-1.1. The notices published in the newspapers were factually incorrect and incomplete. No notice was posted at the principal office of the public body twenty-four hours prior to said meeting.

3. That on March 8, 2007, the Black Hawk Fire District held a public meeting without giving proper notice of said meeting as required by SDCL 34-31A-43 and SDCL 1-25-1.1 . There was no notice either published or posted prior to said meeting.

### **CONCLUSIONS OF LAW**

1. The Black Hawk Fire District is an entity subject to the provisions of the open meetings law, SDCL ch. 1-25.

2. The Black Hawk Fire District is required to publish notice of their annual meeting, by posting a copy of the notice, with the proposed agenda, visible to the public, at least twenty-four hours prior to any meeting, at the principal office of the public body holding the meeting. The Black Hawk Fire District is also required to publish a notice of their annual meeting, together with notice of the election of board members, by one publication in a legal

newspaper of general circulation in each county in which the district is situated, not less than seven days nor more than fourteen days prior to the annual meeting.

3. The Board should be publicly reprimanded.

### **REPRIMAND**

The Black Hawk Fire District is hereby publicly reprimanded for violation of the South Dakota open meetings law.

Commissioners Beck, Brenner, Reedstrom, and Rothschadl concur.

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