

November 28, 2007

STATE OF SOUTH DAKOTA

OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN	)	FINDINGS OF FACT,
MEETING COMPLAINT 07-03	)	CONCLUSIONS OF LAW
BROWN COUNTY	)	AND REPRIMAND

Lisa Rothschadl, Commission Member

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

The Breck Complaint alleges that Brown County violated SDCL 1-25-1.1 in that it failed to post an agenda showing each item to be discussed at its September 27, 2005 meeting at least 24 hours in advance of the meeting in a place "visible to the public at the principal office of the public body holding the meeting" as required by SDCL 1-25-1.1.

The State's Attorney referred the matter to the Open Meetings Commission for disposition of the allegation that the agenda was not posted.

Pursuant to SDCL 1-25-1.1, 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. 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 the circumstances permit. A violation of these rules is a Class 2 misdemeanor.

Brown County acknowledges that the agenda for its regular meeting on September 27, 2005 was not properly posted. The Brown County Auditor did prepare an agenda and publish notice of its September 27, 2005 meeting in the official newspaper for county commission notices. The publication does not, however, completely fulfill the requirements of SDCL 1-25-1.1 in that posting is still required. Brown County acknowledges the oversight and, further, has explained that it is currently complying with SDCL 1-25-1.1.

According to the submissions from the Complainant, Brown County again failed to post the agenda for the October 18, 2007 meeting as required. This second alleged violation was not part of the original complaint and therefore not directly responded to by Brown County. The Commission will not address the merits of this allegation.

A reprimand must be issued under the terms of SDCL 1-25-6, et. seq. The Open Meetings Commission has developed a Summary Procedure for disposition of matters where there is no dispute of fact (attached). This matter is a proper subject of the Summary Procedure and a reprimand is herewith issued without further procedure.

FINDINGS OF FACT

1. Brown County and its Board of Commissioners constitute a political subdivision of the State of South Dakota as referred to in SDCL 1-25-1.

2. That Complainant in this matter asserts that Brown County failed to post notice of its meeting on September 27, 2005 as required by SDCL 1-25-1.1 Although the agenda was available on request, it was not posted at the entrance to the Courthouse or on any bulletin boards in the Courthouse.

3. It is undisputed that the agenda for the Brown County meeting was published in the official newspaper as provided by law.

Brown County does not dispute the allegations. The auditor forgot to post the notice.

CONCLUSIONS OF LAW

1. Brown County is an entity subject to the provisions of the open meetings law found at SDCL Chapter 1-25.

2. Brown County is required to prepare and post the notice of its regular monthly meetings, with a proposed agenda, at least 24 hours prior to any meeting pursuant to SDCL 1-25-1.1. The County timely prepared the agenda and provided a copy upon request to members of the public, but failed to properly post the same for its meeting on September 27, 2005. This is a violation of SDCL 1-25-1.1 and is subject to a public reprimand.

REPRIMAND

Brown County is hereby publicly reprimanded for its violation of the South Dakota Open Meetings Law.

Commission Chair Steele and Commission Members Beck, Brenner and Reedstrom concur.