

July 11, 2005

STATE OF SOUTH DAKOTA
SOUTH DAKOTA OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN MEETING)	FINDINGS OF FACT,
COMPLAINT 05-02, DAVISON)	CONCLUSION OF LAW AND
COUNTY.)	REPRIMAND

Vincent A. Foley, Commission Chair

INTRODUCTION

As noted in In the Matter of Open Meeting Complaint 05-01, Town of Herrick, the statutes favor open discussion of issues, and the exceptions to an open meeting are limited in scope. One such exception is the personnel exception set forth in SDCL 1-25-(1).

FINDINGS OF FACTS

December 13, 2004, the Davison County Commission held a meeting with a task force commissioned to review the operations of the Davison County Jail. At that meeting, the Commission went into executive session with task force members in attendance. It was acknowledged at this Commission's hearing on April 11, 2005, by the Davison County Commissioners that the task force report was discussed. A quick review of the task force report illustrates that the issues covered run from personnel to simple operations.

In the investigation by the State's Attorney, the Commissioners noted that the matters discussed did stray from personnel issues on occasion. State's Attorney Patrick Smith conducted a thorough investigation and included in his summary a well-reasoned explanation on why this matter was not prosecuted,

but also on why there was not an outright dismissal of the complaint as is within his authority. He noted that not every single discussion fell within the statutory exception for discussions of personnel matters.

DISCUSSION

Davison County Commission Chair Bernie Schmucker stated at hearing that they were "trying to produce the best government we know how." Publisher Noel Hamiel of the Mitchell Daily Republic portrayed his complaint simply as a matter of principle to ensure the boundaries of the open-meeting laws are not ignored, and not as an attack on individuals who were working as public servants. We agree with both of these sentiments and do not doubt Davison County's ultimate motive. However, we recognize Mr. Hamiel's need to be vigilant on the exercise of the executive session exceptions. This case presents a good example of the proper application of all of the exceptions.

An exception that touches on only part of a discussion in executive session cannot be used to justify the holding of the entire discussion in executive session. To do that allows the exception to swallow the rule. When the County Commission discussed matters not clearly within the personnel exception, they violated the open meetings rule. As State's Attorney Smith noted in his referral, the violation was "the result of a broader interpretation of the exception than was appropriate." We agree and suggest that the discussion with the task force should have been split into portions divided between appropriate executive session materials and materials outside the exception.

CONCLUSION OF LAW

The exceptions contained in the open meetings law set forth limited justifications for taking discussions out of the public eye. Only when the entire discussion is within one or more exceptions should the executive session be used. Because the Davison County Commission discussed matters beyond the permitted exception, they violated the open meetings law. Pursuant to statute, we reprimand it for that violation.

Commission members **STEELE**, **ROTHSCHADL**, **BRENNER**, and **BECK** concur.

pld.db Findings of Fact...(jmm)