

August 24, 2009

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN MEETING)
COMPLAINT 06-02, ROBERTS)
COUNTY COMMISSION)

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND REPRIMAND

The above entitled matter was referred to the Open Meetings Commission by the Codington County State's Attorney under SDCL 1-25-6, the State's Attorney having received a notarized complaint filed under oath by Jerry Steinley of the Watertown Public Opinion.

The Complaint alleges that three members of the Roberts County Commission met and participated in a meeting on July 18, 2005 in Codington County without posting an agenda or otherwise complying with SDCL 1-25-1 AND SDCL 1-25-1.1.

Subsequently, the Roberts County Commission filed its response to the Complaint. Oral presentations were held in July 2006.

The Roberts County Commission consists of five Commissioners. It is undisputed that on July 18, 2005, three of the Commissioners met. The three Commissioners were Glenn Hall, Dean Strickland, and Louis Voeltz.

The three County Commissioners acknowledge that they did not provide notice to the media or members of the public and did not cause an agenda to be posted as required by SDCL 1-25-1. The three Commissioners assert that they met at the invitation of the Sisseton-Wapheton Oyate ("Sisseton-Wapheton") and that the meeting occurred at the Dakota Sioux Casino, a facility owned by Sisseton-Wapheton. The three County

Commissioners state that they were unaware of the specific nature of the meeting until they actually went to the Dakota Sioux Casino, except that the meeting would involve a tour of the Casino.

At the July 18 meeting the Sisseton-Wahpeton officials asked the Commissioners for an official endorsement supporting the expansion of gaming at the Dakota Sioux Casino. After listening to some discussion from the Sisseton-Wahpeton officials regarding this matter, including the views of Sisseton-Wahpeton officials, the County Commissioners told the Sisseton-Wahpeton officials that the matter would need to be put on the agenda for the next Roberts County Commission meeting which was scheduled for the next day.

The matter was addressed at the Roberts County Commission on July 19. No improprieties are alleged regarding the July 19 meeting.

As set forth below, a reprimand is warranted.

FINDINGS OF FACT

1. Roberts 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 Roberts County Commission consists of five members.

2. A quorum of the Roberts County Commissioners (three commissioners) met on July 18, 2005 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. There are factual questions surrounding the issue of whether the whether the meeting involved official business.

5. On review of the record, it is apparent that official business was actually discussed at the meeting. The Sisseton-Wahpeton officials explained the expansion proposal and asked the three County Commissioners for an official endorsement supporting the expansion of gaming at the Dakota Sioux Casino. Because the Sisseton-Wahpeton officials asked for official county endorsement, it is clear that the meeting involved the discussion of official business i.e. the county endorsement of the casino expansion. The Sisseton-Wahpeton Chair also offered his views to the County Commissioners regarding the county's portion of the funds received in the state tax system. Although the Roberts County Commissioners also toured the casino and discussed other matters clearly unrelated to official business, such other business does not negate the fact that official business was discussed.

6. The record indicates that it was mostly the Sisseton-Wahpeton officials who did the talking and the three County Commissioners who did the listening. Regardless of the fact that Sisseton-Wahpeton officials raised the issues and apparently did most of the talking, these were still matters of official business. As the OMC stated in *Matter of Kingsbury County*, county officials who listen to presentations by others regarding business specific to the county involved are still considered to be meeting for official business, so long as a quorum is present.

7. Based on the record presented, there is little or no evidence to demonstrate that the commissioners knew in advance that official business would be discussed so as to have an opportunity to post an agenda and otherwise comply with the open meeting laws.

The Sisseton-Wahpeton Oyate made their invitation by telephoning the county auditor who relayed the request to the County Commission. As such, the County Commissioners involved were aware they were asked to attend in their role as county commissioners, but thought it was merely a tour of the casino. They rode to the meeting together.

However, the Commissioners steadfastly assert that they were completely unaware that the Sisseton-Wahpeton would ask them to discuss official matters until the meeting was called to order at the casino. Due to that circumstance, the Roberts County Commission did not have adequate information available to post agendas and notify the media in advance. To be sure, County Commissioners should be obligated to find out in advance what kind of meeting they are being asked to attend. Had they exercised some effort in that regard, they might have found out what the meeting was really about. Nonetheless, they did not know and cannot be held accountable for posting agendas when they thought they were not going to be discussing official business. A casino tour alone is not official business considering that it is not a facility operated or funded by the County itself or even located within Roberts County.

8. There is an important additional issue. Once the three Roberts County Commissioners became aware that the matter involved official business they remained at the meeting and listened to or otherwise discussed official business. They testified that they felt uncomfortable, that one or more of the commissioners tried to change the subject, and that they asked the Sisseton-Wahpeton officials to come to the County Commission meeting the next day for full discussions. However, they did remain and discuss official business at least for some unknown period of time. The reason they did

not immediately leave was that they did not want to strain relations with the Sisseton-Wahpeton.

9. By remaining at the meeting and engaging in discussions with the Sisseton-Wahpeton officials (or listening to the Sisseton-Wahpeton position), a quorum of the Roberts County Commission did meet and discuss official business.

10. No decisions were made and no votes were taken by the three County Commissioners on July 18.

11. It is undisputed that the matter was later placed on the agenda for the July 19 meeting of the Roberts County Commission and that Sisseton-Wahpeton officials attended the July 19 meeting. On July 19 the County Commissioners took official action and asked the Governor to support the expansion.

CONCLUSIONS OF LAW

1. The Roberts County Commission 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. The meeting involved here occurred outside of Roberts County, but the Roberts County Commissioners are still subject to the open meeting laws outside their county boundaries.

2. Under SDCL 1-25-1.1, the Roberts County Commission 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.

3. It is undisputed that a quorum of the Roberts County Commission was present on July 18, 2005. No agenda was posted and media were not notified that there would be

Roberts County Commission meeting under SDCL 1-25-1. The determinative issue here is whether official business was discussed.

4. The Commissioners were requested, as County Commissioners, to come to the Dakota Sioux Casino. They expected a tour. However, they did attend the meeting (and remained in the meeting) where county business was discussed. The three commissioners discussed the Sisseton-Wahpeton gaming expansion plan and listened to the Sisseton-Wahpeton pitch for endorsement of their expansion. Although no decisions were made and no votes were taken during the July 18, 2006 meeting, the meeting actually involved official business.

5. The three County Commissioners attended the meeting at the request of another governmental body. In *Melrose Township* the OMC determined that when a quorum of an entity subject to the open meeting laws meets for official purposes it must comply with the open meeting law regardless of whether they actually attended a meeting of another governmental body. In that case a quorum of township officials attended a regularly scheduled county commission meeting. The OMC stated that the township has an independent obligation to post its notice and issued a reprimand.

After the OMC decision was issued in *Melrose*, the legislature changed SDCL 1-25-1, adding language stating that “It does not constitute an official meeting if members of a political subdivision of this state are attending a meeting of the state or one of its political subdivisions, a board, a commission, an association, an agency, or any other public entity for which public notice is provided pursuant to SDCL 1-25-1.1 for the purpose of providing information or observing and the notice requirements in SDCL 1-25-1.1 do not apply.” This language became effective on July 1, 2008.

6. The new post-Melrose exemption does not apply for two reasons. First, the conduct involved here occurred before this new language was enacted. Second, there is no evidence in the record that would indicate that the other governmental body issued a notice under the open meeting laws in SDCL ch. 1-25 or was even required to do so.

7. The three Commissioners assert that they remained at the meeting because they did not wish to strain relations with the Sisseton-Wahpeton. 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.

REPRIMAND

The Roberts County Commission (Commissioners Glenn Hall, Dean Strickland, and Louis Voeltz) are hereby publicly reprimanded for violating the SDCL 1-25-1 and SDCL 1-25-1.1.

The foregoing decision is issued by Open Meetings Commission Chairman Brenner and Members Reedstrom, Rothschadl, Sovell and Steele.