

STATE OF SOUTH DAKOTA  
OPEN MEETINGS COMMISSION

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IN THE MATTER OF OPEN	)	OMC 2021-02
MEETINGS COMPLAINT AGAINST	)	
BENNETT COUNTY BOARD OF	)	FINDINGS OF FACT,
COMMISSIONERS – BENNETT	)	CONCLUSIONS OF LAW, &
COUNTY	)	DECISION

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The above captioned matter was heard before the South Dakota Open Meetings Commission (hereafter “Commission”) on November 18, 2024.

Complainant, Jolene Donovan, did not appear personally or through counsel.

The Bennett County Board of Commissioners did not appear and did not appear through counsel. Prior to the hearing, the Commission reviewed the written submissions of the parties as well as any other exhibit, pleading or paper on file herein. Based solely upon the materials submitted, the Commission enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Commission takes official notice that Bennett County is a political subdivision of the State of South Dakota created by the Legislature and duly organized and operated according to applicable provisions of South Dakota Codified Law.

2. The Commission further takes notice that the Bennett County Board of Commissioners (hereafter “Board of Commissioners”) is a public body elected pursuant to applicable provisions of state law to govern Bennett County.

3. The Board of Commissioners met on July 7, 2021. The Board of Commissioners, during that meeting, met in executive session with the Bennett County Sheriff. The agenda for the meeting did not give notice that an executive session would be held.

4. After concluding the executive session, the Board of Commissioners took official action on a pay raise for a Sheriff's Office transport officer.

5. The minutes of the Board of Commissioners' July 7, 2021, meeting show that the Board of Commissioners entered executive session with the Sheriff and Chief Deputy to discuss a personnel matter. The minutes also show the Board of Commissioners, after exiting executive session, took official action to raise the transport officer's salary.

6. Audio provided as part of the complaint materials submitted in this matter also establishes the above actions by the Board of Commissioners.

7. Jolene Donovan, Bennett County Treasurer, submitted an open meetings complaint to the Bennett County State's Attorney concerning the executive session held on July 7, 2021. Ms. Donovan alleged that the Board of Commissioner's violated the open meetings laws by entering executive session without an executive session noted on that meeting's agenda, and by taking official action on an item not listed on the meeting's agenda.

8. On August 18, 2021, Bennett County State's Attorney Sarah Harris forwarded the complaint to the Commission pursuant to SDCL § 1-25-6.1(3).

9. In its written response to the complaint, the Board of Commissioners admitted that it took official action at its July 7, 2021, meeting on an item that was not included on that meeting's agenda by approving the increase in the transport officer's salary. The Board of Commissioners noted that the action was ratified by a vote of the Board of Commissioners at its July 21, 2021, meeting.

10. SDCL § 1-25-1.1 requires political subdivisions (as that term is defined by SDCL § 1-25-12(1)) to provide public notice of their official meetings by posting a proposed agenda at least twenty-four hours preceding the meeting.

11. Any Finding of Fact more appropriately labeled as a Conclusion of Law is hereby re-designated as such and incorporated below therein.

#### CONCLUSIONS OF LAW

1. The Bennett County Board of Commissioners, as the governing body of Bennett County, South Dakota, is a public body subject to the open meetings requirements of SDCL ch. 1-25. The Open Meeting Commission has jurisdiction over this matter pursuant to SDCL ch. 1-25.

2. SDCL § 1-25-1.1 requires each political subdivision to post a proposed agenda for any official meeting of the political subdivision.

3. “[T]he function of an agenda is to inform the members of the public in some detail as to the matters to be discussed at the meeting of [a] public body.” Ann Taylor Schwing, *Open Meetings Laws* 3d, § 5.40 (2011). An agenda must be sufficient to generally advise the public of the time and place of an official meeting of a political subdivision and advise the public of the nature of the items to be addressed at the meeting.

4. By failing to include the executive session on its July 7, 2021, meeting agenda, the Board of Commissioners failed to afford the public the right to know what official business would be discussed or conducted at that meeting. This is a violation of the state’s open meetings laws.

5. Official action by a political subdivision must be preceded by proper public notice through inclusion of the item on the final agenda adopted by the political subdivision for a meeting. The Commission concludes that where an item is acted upon without having been included on the meeting’s agenda a violation of the state open meetings laws occurs. The Board of Commissioners violated the state’s open meetings laws when it took official action at its July 7, 2021, meeting on an item that was not included on the meeting’s agenda.

6. Any Conclusion of Law more appropriately labeled as a Finding of Fact is hereby re-designated as such and incorporated above therein.

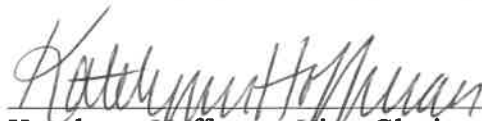
## DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the South Dakota Open Meetings Commission hereby **REPRIMANDS** the Bennett County Board of Commissioners for violating the South Dakota Open Meetings Laws by entering into executive session without that executive session being noted on the agenda for the Board of Commissioners' July 7, 2021, meeting. And, also for the Board of Commissioners taking action official action on an item that was not included on the agenda for that meeting.

Decision entered by Commissioners **A. Hoffman, K. Hoffman, Russell, & Smith**. Commissioner **Sovell** (Chair) was absent and took no part in consideration of the written decision.

Dated this 12<sup>th</sup> day of May, 2025.

SOUTH DAKOTA OPEN MEETINGS COMMISSION

  
Katelynn Hoffman, Vice-Chair