

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN)	OMC 2024-02
MEETINGS COMPLAINT AGAINST)	
BENNETT COUNTY BOARD OF)	FINDINGS OF FACT,
COMMISSIONERS – BENNETT)	CONCLUSIONS OF LAW, &
COUNTY)	DECISION

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

Complainant, Robert Fogg, appeared personally. 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 February 1, 2023. During that meeting, a commissioner requested to enter executive session for “contractual” reasons. The initial minutes for the meeting indicate there was no second to the motion to enter executive session and no vote taken to enter executive session. The Board of Commissioners met in executive session for approximately fifty minutes.

4. At its March 1, 2023, meeting the Board of Commissioners amended the minutes of the February 1, 2023, meeting to indicate that no second was made to the motion to enter executive session, but that all Commissioners present voted to enter executive session.

5. Robert Fogg submitted an open meetings complaint to the Bennett County State’s Attorney on February 28, 2023. Mr. Fogg alleged that the Board of Commissioner’s violated the open meetings laws by entering executive session without a proper motion, second, and vote of the Commissioners.

6. On May 9, 2023, Bennett County State’s Attorney Sarah Harris forwarded the complaint to the Commission pursuant to SDCL § 1-25-6.1(3).

7. The Board of Commissioners did not respond to this complaint.

8. Regarding the procedure necessary to enter executive session, SDCL 1-25-2 states than an executive session of a public body may only be held “upon a majority vote of the members of such body present and voting...”

9. 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 1-25-2 only authorizes public bodies to enter executive session for the specific purposes stated in the statute and for any other issue defined as privileged or confidential under state or federal law. As noted above, the statute requires a vote of the public body to enter executive session.
3. The Commission concludes that implied within the authority to enter into executive session is the requirement that the public body appropriately enter executive session by entertaining a motion to enter executive session for a clearly stated authorized purpose, obtaining a second to that motion, followed by a vote of the members of the body.
4. By failing to obtain a second to the motion to enter executive session at its February 1, 2023, meeting, the Board of Commissioners violated the state's open meetings laws.
5. 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 obtaining a second to the motion to enter executive session at its February 1, 2023, 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 12th day of May, 2025.

SOUTH DAKOTA OPEN MEETINGS COMMISSION



Katelynn Hoffman, Vice-Chair