

STATE OF SOUTH DAKOTA  
OPEN MEETINGS COMMISSION

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IN THE MATTER OF OPEN	)	OMC 2024-04
MEETINGS COMPLAINT AGAINST	)	
LINCOLN COUNTY BOARD OF	)	FINDINGS OF FACT,
COMMISSIONERS – LINCOLN	)	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, Wendi Hogan appeared personally. The Lincoln County Commission appeared through Lincoln County Deputy State’s Attorney Drew DeGroot. 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 Lincoln 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 Lincoln County Board of Commissioners (hereafter “Board of Commissioners”) is a public body elected pursuant to applicable provisions of state law to govern Lincoln County.

3. On November 29, 2023, NuGen Energy, LLC hosted an invitation only open house event at the production facility in Marion, South Dakota. The event was organized to provide information why NuGen Energy had partnered with Summit Carbon Solutions.

4. Summit Carbon Solutions has proposed to build a carbon sequestration pipeline across many counties in the eastern portion of South Dakota. The proposal has generated both support and opposition in communities across South Dakota.

5. Prior to the NuGen invitation, the Board of Commissioners had established a Carbon Dioxide Transport and Storage Advisory Committee to review Lincoln County Ordinances as they pertained to pipelines.

6. The Board of Commissioners is comprised of five Commissioners.

7. The invitation was received a day or two before the event by the entire Board of Commissioners. Three Commissioners – a quorum of the Board of Commissioners attended the event. The Board of Commissioners did not post an agenda for the NuGen event or issue a notice of quorum for the event.

8. SDCL 1-25-12(3) defines an “official meeting” of public body to be “any meeting of a quorum of a public body at which official business or public policy is discussed or decided by the public body[.]”

9. SDCL 1-25-1 requires the official meetings of public bodies to be open to the public, and SDCL 1-25-1.1 requires public bodies to post notice of their official meetings at least twenty-four hours prior to the meeting.

10. SDCL 1-25-1 also creates an exemption to the posting requirement of 1-25-1.1 stating:

For any event hosted by a nongovernmental entity to which a quorum of the public body is invited and public policy may be discussed, but the public body does not control the agenda, the political subdivision may post a public notice of a quorum, in lieu of an agenda. The notice of a quorum shall meet the posting requirements of § 1-25-1.1 or 1-25-1.3 and shall contain, at a minimum, the date, time, and location of the event.

11. Wendi Hogan submitted an open meetings complaint to the Lincoln County State's Attorney on December 8, 2023. Ms. Hogan alleged that the Board of Commissioner's violated the open meetings laws when a quorum of the Board of Commissioners attended the NuGen Energy event and no notice of quorum was posted for the event by the Board of Commissioners.

12. On December 21, 2023, the Lincoln County State's Attorney's Office forwarded the complaint to the Commission pursuant to SDCL § 1-25-6.1(3).

13. The Board of Commissioners responded to the complaint by acknowledging that a quorum of the Board of Commissioners was present at the NuGen event but asserting that public policy was not discussed and therefore no violation occurred.

14. Before the Commission, the Board of Commissioners elaborated on their contention that the Commissioners who attended the event were not certain that public policy specific to Lincoln County – i.e. ordinances or regulations of Lincoln County – would be discussed at the NuGen event. Also,

the Board of Commissioners asserted that the individual Commission members were not certain that a quorum of the Board of Commissioners would be at the event.

15. 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 Lincoln County Board of Commissioners, as the governing body of Lincoln 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. The State open meetings laws require a public body to post formal notice of its official meetings (SDCL 1-25-1.1) or comply with the notice of quorum procedure found in SDCL 1-25-1.

3. The notice of quorum procedure in SDCL 1-25-1 requires three elements: 1) that the event in question be hosted by a nongovernmental entity, 2) that a quorum of the public body be invited, and 3) that public policy of the public body may be discussed.

4. It is uncontested that the NuGen Energy, LLC, is a non-governmental entity. It is also uncontested that a quorum of the Lincoln County Board of Commissioners attended the NuGen event on November 29, 2023.

5. Concerning discussion of public policy at a nongovernment event, SDCL 1-25-1 authorizes the use of the notice of quorum when “public policy may be discussed.” (emphasis added). The statute does not require certainty that substantive discussions of public policy will occur. The NuGen Energy event was organized by a nongovernmental organization who had partnered with an entity (Summit Carbon Solutions) that had potential dealings with Lincoln County. It was implied through the invitation that public policy of Lincoln County may be discussed at the event.

6. By allowing a public body to use the notice of quorum procedure for nongovernmental events, rather than post formal notice of an official meeting of the public body, SDCL 1-15-1 also imposes an implied responsibility on the public body to determine if a quorum of its members have been invited to the event, or whether a quorum of the members plan to attend the event.

7. The Commission concludes that by failing to post a notice of quorum for the November 29, 2023, NuGen Energy event, the Lincoln County Board of Commissioners violated the state’s open meetings laws when a quorum of the public body attended the event.

8. 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 Lincoln County Board of Commissioners for violating the South Dakota Open Meetings Laws by not posting a notice of quorum for the NuGen Energy event attended by a quorum of the Board of Commissioners.

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

  
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Katelynn Hoffman, Vice-Chair