

June 23, 2009

STATE OF SOUTH DAKOTA

OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN	)	FINDINGS OF FACT,
MEETING COMPLAINT 08-03	)	CONCLUSIONS OF LAW and
BROWN COUNTY COMMISSION	)	FINDING OF NO VIOLATION

South Dakota has enacted a statute requiring meetings of local governing bodies to take place in public forum, SDCL ch. 1-25. Those meetings may only take place after compliance with notice requirements found in SDCL 1-25-1.1, which provides in part that “all public bodies shall provide public notice, with proposed agenda, at least twenty-four hours prior to any meeting, by posting a copy of the notice, visible to the public, at the principal office of the public body holding the meeting” Violation of this statute is a Class 2 misdemeanor.

DISCUSSION AND DECISION

This matter comes before the Open Meeting Commission under the complaint of Betty Breck as to the Brown County Commission’s failure to provide proper notice of its meeting by posting an agenda at least 24 hours before the meeting at a place visible to the public. Her complaint alleges that Brown County Commission failed to post this agenda because the agenda was posted backward outside of the meeting place on the Monday evening before the regular Tuesday meeting of the Brown County Commission on September 9, 2008, at 8:45 a.m. The complaining party alleges that although an agenda did appear to be posted, it was not visible to the public from the outside of the building after hours because the doors were locked. The parties did not dispute that the agenda was also posted inside the courthouse during

regular business hours on the Monday before the meeting, including in the room adjoining the Brown County Commission chamber and on the courthouse doors on the west side of the building.

After reviewing the record herein and hearing the statements of the parties, the Open Meeting Commission concludes that the agenda, as posted, was sufficient notice as contemplated by the statute. The statute does not require that the agenda be posted for 24 continuous hours per day; it merely requires that the notice be posted.

We do not decide here, however, whether posting at a time when the notice would not have been visible during a regular business day is adequate. Here the notice was posted on during regular business hours on Monday for a meeting on Tuesday. We reserve the issue of whether, for example, if the meeting had been on Monday morning and the posting on Friday afternoon and the place of posting were not open to the public on either of the intervening days such posting would have complied with the statute.

Although the provisions of SDCL 17-34, Notice by Posting, have not been expressly implicated by either party, we nonetheless view provisions of that chapter as supporting our interpretation, in particular, SDCL 17-3-1 and SDCL 17-3-2. Section 17-3-1 provides that each county is to have a bulletin board for posting legal notices that has been designated for such by the county commission. That statute expressly contemplates that the bulletin board so designated maybe “in one of the corridors of the courthouse commonly used by the public” that is, to say indoors. We are not aware of any courthouse in the state that is routinely open to the public 24 hours per day and cannot conclude

that the legislature contemplated that the bulletin board would be viewable 24 hours per day.

SDCL 17-3-2 provides that “whenever by statute or rule the posting of any notice or court order is required as a manner and method of giving notice, it shall be sufficient compliance, unless the context of such statute or rule otherwise plainly requires, to post a copy of such notice or order upon the bulletin board designated pursuant to SDCL 17-3-1.”

Although there has been nothing presented by the parties in this case about posting on the county bulletin board, we take these statutes to persuasively demonstrate that the legislative intent, with regard to posting notices, does not contemplate 24 hours visibility, but rather visibility during reasonable business hours.

The posting of the agenda as was done by Brown County Commission was therefore in compliance with the statute. The Open Meetings Commission therefore makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Brown County Commission is the governing body of a political subdivision of the State and, therefore, an entity subject to the open meeting requirements of SDCL ch. 1-25.

2. The Brown County Commission caused an agenda to be posted at least 24 hours prior to their regularly scheduled meeting on Tuesday, September 9, 2008.

CONCLUSIONS OF LAW

1. The Brown County Commission is an entity subject to the provisions of the Open Meeting Law, SDCL ch. 1.25.
2. The agenda that was posted on Monday, September 8, 2008, was done in compliance with the statute.
3. The Brown County Commission is not in violation of the open meeting laws, as alleged.
4. The alternate proposed Findings of Fact and Conclusions of Law and the Request for Reconsideration filed by Ms. Breck on December 3, 2009, are hereby denied.

Entered by Commissioner Chairman Brenner and Commissioners Beck, Reedstrom, Rothschadl, and Steele.