

December 16, 2015

STATE OF SOUTH DAKOTA  
OPEN MEETINGS COMMISSION

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IN THE MATTER OF OPEN	)	FINDINGS OF FACT,
MEETINGS COMPLAINT 2014-05;	)	CONCLUSIONS OF LAW AND
IMLAY TOWNSHIP BOARD OF	)	DECISION
SUPERVISORS	)	

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The above captioned matter was heard before the South Dakota Open Meetings Commission (Commission) on May 5, 2015. Doug Albertson, Complainant, appeared in person and without the assistance of legal counsel. The Imlay Township Board of Supervisors, Respondent, was represented by legal counsel Michael Hickey. Martha Whitcher, Township Clerk/Treasurer, and Julian Whitcher, Township Supervisor, were also personally present. 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 upon the materials submitted and the arguments of the parties, the Commission enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Commission takes official notice that Imlay Township is a township located in Pennington County, South Dakota, and has been organized and operated according to applicable provisions of South Dakota Codified Law.

2. The Commission also takes official notice that the Imlay Township Board of Supervisors is a public body elected pursuant to applicable provisions of state law to govern Imlay Township.

3. On November 25, 2014, Mr. Doug Albertson submitted an open meetings complaint to the Pennington County State's Attorney regarding the Imlay Township Board of Supervisors.

4. On December 10, 2014, Pennington County State's Attorney Mark Vargo forwarded the complaint to the Commission pursuant to SDCL 1-25-6(3).

5. On March 4 or 5, 2014, the Imlay Township Board held its annual meeting. The parties do not dispute this meeting was properly noticed and open to the public.

6. At this meeting, Mr. Albertson requested on behalf of Conata Ranch that two auto gates (cattle gates) on Bouquet Table Road be replaced. The Township Board informed Albertson the auto gates could be replaced at Conata Ranch's expense, installation of the gates would be performed by Township officials, and once installed the auto gates would become the property of the Township.

7. On March 17, 2014, the Township Board again met. The parties do not dispute this meeting was also properly noticed and open to the public.

8. At the March 17 meeting, the Township Board voted to approve the work necessary to install the auto gates. The minutes from the meeting indicate the gates were to be installed at the expense of Conata Ranch, and

once installed the gates would become the property of Imlay Township. The minutes also indicate the Township maintenance person was to install the gates.

9. The auto gates were installed on June 21-22, 2014 by Mr. Alberston and Monte Whitcher, Township Supervisor and maintenance person. Township equipment was used in the installation of the auto gates.

10. In July 2014, Mr. Albertson received a bill totaling \$1,500.00 from Imlay Township. The bill was sent by Martha Whitcher, Township Clerk, and indicated the bill was for five hours of machine and operator time billed at \$300.00 per hour.

11. On August 22, 2014, Mr. Albertson contacted Township Board Chair Jim Whitcher by telephone to inquire how the bill received by Conata Ranch was calculated. According to Mr. Albertson, Jim Whitcher ultimately responded that he was only one person. Jim Whitcher did not testify at the hearing before the Commission.

12. Mr. Albertson alleged in bringing his complaint that sometime after the installation of the auto gates on Bouquet Table Road the Township Board met and established, or approved of, the amount billed to Conata Ranch. This alleged meeting, if it occurred, would not have been properly noticed to the public.

13. The Township Board asserted at the hearing before the Commission that Martha Whitcher calculated the bill for Conata Ranch on her

own initiative by reference to FEMA guidelines. The Township Board stated that a meeting of a quorum of the Township Board where the Conata Ranch bill was discussed or adopted did not occur.

14. 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 Imlay Township Board of Supervisors, as the governing body of Imlay Township, Pennington County, South Dakota, is a public body subject to the open meeting requirements of SDCL ch. 1-25. The Open Meeting Commission has jurisdiction over this matter pursuant to SDCL ch. 1-25.

2. The Commission concludes insufficient evidence exists in the record before the Commission to establish that a quorum of the Imlay Township Board of Supervisors met to discuss or take official action of the body outside of a properly noticed meeting.

3. Based upon the materials in the record and the testimony presented at the hearing of this matter, the Commission concludes the Imlay Township Board of Supervisors did not violate the South Dakota Open Meetings Laws in relation to establishing the amount billed to Conata Ranch for installation of the auto gates on Bouquet Table Road.

4. 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 determines the Imlay Township Board of Supervisors did not violate the South Dakota Open Meetings Laws in regards to the facts and allegations raised by the Complaint filed in this matter.

Decision entered by Commissioners **Sovell** (Chair), **Krull**, **Reedstrom**, **Rothschadl**, & **Steele**.