

May 4, 2016

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN)	OMC 2015-02
MEETINGS COMPLAINT AGAINST)	
THE SULLY COUNTY PLANING &)	FINDINGS OF FACT,
ZONING COMMISSION, SULLY)	CONCLUSIONS OF LAW AND
COUNTY COMMISSION, AND SULLY)	DECISION
COUNT PLANNING & ZONING)	
COMMISSION SITTING AS THE)	
BOARD OF ADJUSTMENT)	

The above captioned matter was heard telephonically before the South Dakota Open Meetings Commission (Commission) on December 14, 2015. Complainant Adam Altman, Altman Law Office, Aberdeen, South Dakota, appeared telephonically. The Sully County governmental entities were represented by legal counsel Jack Hieb, Richardson, Wyly, Wise, Sauck & Hieb, LLP, Aberdeen, South Dakota. Prior to the hearing, the Commission reviewed the written submissions of the parties as well as any other exhibits, pleadings or papers 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 Sully 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 also takes notice that the Sully County Planning and Zoning Commission, and the Sully County Planning and Zoning Commission when sitting as the Board of Adjustment are political subdivisions organized and operated under applicable provisions of South Dakota Codified Law and/or county ordinance.

3. On August 12, 2015, Adam Altman submitted an open meetings complaint to the Sully County States Attorney regarding the Sully County Commission, Sully County Planning & Zoning Commission, and the Sully County Planning & Zoning Commission sitting as the Board of Adjustment.

4. Sully County States Attorney Emily Sovell, due to a conflict of interest, referred the Complaint to Faulk County States Attorney Timothy Bormann for review.

5. On October 26, 2015, States Attorney Bormann forwarded the complaint to the Commission pursuant to SDCL 1-25-6(3).

6. SDCL 1-25-1.1 requires that all public bodies provide notice of their meetings by posting a proposed agenda at least 24 continuous hours immediately preceding the meeting. The statute also requires that said notice “shall be posted on the public body’s website upon dissemination of the notice, if such a website exists.”

7. Mr. Altman alleged in bringing his complaint that the named Sully County governmental entities violated SDCL 1-25-1.1 by not posting notice of

meetings held on February 3, February 26, March 24 and July 14, 2015, on the website sullycounty.net.

8. Sullycounty.net contains general introductory information regarding Sully County, and the various county offices.

9. A statement by States Attorney Sovell to the Sully County Commission on February 26, 2015, indicated the website sullycounty.net was created by an employee of the Sully County Sheriff's Office.

10. At the hearing of this matter it was asserted by Sully County that the website was created by the employee's own initiation and not at the direction of the County.

11. Sullycounty.net, during the timeframe pertinent to the matter, contained links to various minutes or other postings from the Sully County Commission and the Sully County Planning & Zoning Commission.

12. Sullycounty.net was hosted by Factor 360, a website design and hosting company in Pierre, South Dakota.

13. Minutes of the Sully County Commission that predate the complaint filed in this matter indicate that monetary payments were made by Sully County to Factor 360.

14. On February 3, 2015, the Sully County Planning & Zoning Commission met and did not post notice of the meeting on the website sullycounty.net.

15. On February 26, 2015, The Sully County Commission met and did not post notice of the meeting on the website sullycounty.net.

16. Shortly after the February 26th meeting of the County Commission a disclaimer was added to sullycounty.net that read “this website is not regularly updated or maintained and has not been adopted as the official website for Sully County, South Dakota. For information regarding upcoming meetings, please contact the Sully County Auditor’s Office.”

17. On March 24, 2015, the Sully County Commission met and did not post notice of the meeting on the website sullycounty.net.

18. On July 14, 2015, the Sully County Planning & Zoning Commission sitting as the Board of Adjustment met and did not post notice of the meeting on the website sullycounty.net.

20. In responding to the complaint, Sully County asserted that postings to sullycounty.net were not required because the website was never adopted as the official website of Sully County, and the County Commission had no recollection of authorizing said website.

21. In responding to the complaint, Sully County also asserted that the disclaimer placed on the website after February 26, gave the public adequate notice that the website was not updated or maintained and was not the official website of Sully County.

22. 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 Sully County Commission, Sully County Planning & Zoning Commission, and Sully County Planning & Zoning Commission sitting as the Board of Adjustment, are public bodies 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 notes that SDCL 1-25-1.1 does not require a public body to “officially” adopt a website. The statute however does contain a mandatory directive through the use of the word “shall” that public bodies must post notice of meetings on the public body’s website if one exists.

3. A majority of the Commission concludes that sullycounty.net was in affect adopted as the website of Sully County through the general appearance of the website and the information contained therein, the general awareness of the website by various Sully County employees, prior use of it by various offices and officials of Sully County, and the monetary payments made by Sully County to Factor 360.

4. Based upon the materials in the record and the testimony presented at the hearing of this matter, the Commission concludes the Sully County Planning & Zoning Commission did violate the South Dakota Open Meetings Laws in relation to a meeting held on February 3, 2015, where notice of said meeting was not posted on sullycounty.net.

5. Based upon the materials in the record and the testimony presented at the hearing of this matter, the Commission concludes the Sully County Commission did violate the South Dakota Open Meetings Laws in relation to meetings held on February 26 and March 24, 2015, where notice of said meeting was not posted on sullycounty.net.

6. Based upon the materials in the record and the testimony presented at the hearing of this matter, the Commission concludes the Sully County Planning and Zoning Commission sitting as the Board of Adjustment did violate the South Dakota Open Meetings Laws in relation to a meeting held on July 14, 2015, where notice of said meeting was not posted on sullycounty.net.

7. 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 Sully County Commission, Sully County Planning and Zoning Commission, and Sully County Planning and Zoning Commission sitting as the Board of Adjustment in that these public bodies failed to post notice of proposed agenda for the meetings discussed in the Findings of Fact and Conclusion on the sullycounty.net website as required by SDCL 1-25-1.1.

Decision entered by Commissioners **Reedstrom, Rothschadl, & Steele.**

Commissioner **Krull** did not concur in the decision. Commissioner **Sovell** abstained from hearing the matter and took no part in the Commission's deliberation or decision.