

May 5, 2015

STATE OF SOUTH DAKOTA  
OPEN MEETINGS COMMISSION

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IN THE MATTER OF OPEN	)	FINDINGS OF FACT,
MEETINGS COMPLAINT 2014-03;	)	CONCLUSIONS OF LAW AND
FREEMAN SCHOOL BOARD	)	REPRIMAND

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The above captioned matter was heard before the South Dakota Open Meetings Commission (Commission) on November 21, 2014. Chris Eisenbeis, Complainant, appeared in person without the assistance of legal counsel. Freeman School Board, Respondent, was represented by Superintendent Don Hotchkiss and Business Manager Ronda Rhinehart, who also appeared with counsel Thomas Harmon. 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 the Freeman School District is a school district organized pursuant to the provisions of Title 13 of the South Dakota Codified Law to provide and operate a school educational program in South Dakota.

2. The Commission takes official notice that the Freeman School Board is the public body elected pursuant to applicable provisions of state law to govern the Freeman School District.

3. On August 19, 2014, Mr. Chris Eisenbeis submitted an open meetings complaint to Hutchinson County States Attorney Glenn Roth regarding the Freeman School Board.

4. On August 22, 2014, States Attorney Roth forwarded the complaint to the Commission pursuant to SDCL 1-25-6(3).

5. Mr. Eisenbeis' complaint raised two open meeting issues regarding the School Board's notice and posting of its proposed agenda for its July 14, 2014 meeting. First, Mr. Eisenbeis alleged the School Board failed to post the proposed agenda in a location that was visible, readable and accessible for the entire 24 hour period immediately prior to the noticed meeting.

6. Mr. Eisenbeis' second allegation stated that the School Board failed to post a copy of the proposed agenda for the July 14 meeting on the website operated by the School District.

7. On October 9, 2014, Thomas Harmon submitted the written response of the School Board for consideration by the Commission.

8. The School Board held a meeting on Monday July 14, 2014.

9. The agenda for the meeting was posted on the window of the Superintendent's office no later than July 3, 2014. The window in question is visible to the public from the hallway of the building, but is not an exterior

window. The public has access to the building during normal school business hours.

10. Mr. Eisenbeis asserted that to comply with the requirements of SDCL 1-25-1.1 the agenda should have been posted on an exterior door or window of the school building so that it was visible and readable for the entire continuous 24 hour period immediately prior to the meeting.

11. The School Board asserted that the statute in question does not contain the word “continuous,” but only requires an “entire” 24 hours of notice by posting an agenda that is visible, readable and accessible to the public for at least 24 total hours between when the agenda is posted and when the meeting is held.

12. The School Board conceded that it did not post the proposed agenda for the July 14 meeting on the School District’s website.

13. 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 Freeman School Board, as the governing body of the Freeman School District, 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. In 2011, the Commission found that a city council and a city planning commission posted agendas at least 24 hours in advance of a

regularly scheduled meeting that were visible to the public during normal business hours. These agendas were not posted on exterior windows or doors. *See In re Aberdeen City Council and Aberdeen Planning Commission*, OMC nos. 11-06 and 11-07.

3. In 2012, the South Dakota Legislature amended SDCL 1-25-1.1 to include the requirement that a proposed agenda be posted in a manner “that is visible, readable, and accessible for at least an *entire* twenty-four hours before any meeting.” The 2012 amendments also added the requirement that a proposed agenda also be posted “on the public body’s website . . . if such a website exists.” S.D. Sess. Laws 2012, ch. 6 (emphasis added).

4. The Commission concludes that the proposed agenda for the July 14 meeting of the School Board was posted in a manner that was visible to the public and readable. The Commission also concludes that the proposed agenda was posted in a location that was accessible to the public during normal business hours for a total period of time equal to or greater than 24 hours.

5. A majority of the Commission believes, however, that the language of SDCL 1-25-1.1 is ambiguous regarding the intent and meaning behind the Legislature’s use of the word “entire” in requiring posting for “an entire twenty-four hour period.”

6. A majority of the Commission concludes that the Freeman School Board did not violate the state open meetings laws when they posted the

proposed agenda for the July 14 meeting in an office window facing an interior hallway accessible to the public at least 7 business days prior to the meeting.

7. The Commission concludes the Freeman School Board did violate the provisions of SDCL 1-25-1.1 in that the School Board failed to post, prior to the meeting, the proposed agenda for the July 14 meeting to the website operated by the Freeman School District.

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 Freeman School Board for violating the South Dakota Open Meetings Laws in that the School Board failed to post notice of the proposed agenda for its July 14, 2014, meeting on the website operated by the School District as required by SDCL 1-25-1.1.

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