

November 3, 2017

STATE OF SOUTH DAKOTA

OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN)	OMC 2016-02
MEETINGS COMPLAINT AGAINST)	
KULM TOWNSHIP BOARD OF)	FINDINGS OF FACT,
SUPERVISORS – HUTCHINSON)	CONCLUSIONS OF LAW AND
COUNTY)	DECISION

The above captioned matter was heard before the South Dakota Open Meetings Commission (Commission) on August 31, 2017. Complainant Deb Nyenhuis, appeared personally and without counsel. Doug Fischer, Paul Baumiller, and Jarrod Nuss, Kulm Township Board of Supervisors, each appeared personally and without counsel. 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 Kulm Township is located in Hutchinson County, South Dakota, and has been organized and operated according to applicable provisions of South Dakota Codified Law.
2. The Commission further takes notice that the Kulm Township Board of Supervisors is a public body elected pursuant to applicable provisions of state law to govern Kulm Township.

3. At all times pertinent to this matter the Kulm Township Board of Supervisors consisted of Doug Fischer, Paul Baumiller, and Jarrod Nuss.

4. At its July 19, 2016, meeting, the Hutchinson County Commission received a complaint that the Stoebner approach and the Albrecht approach were obstructing the flow of water. The Stoebner and Albrecht approaches are on township roads within Kulm Township.

5. Ms. Nyenhuis owns the real property the Stoebner approach is located on. Mr. Stoebner is Ms. Nyenhuis's brother.

6. On July 20, 2016, all three members of the Kulm Township Board of Supervisors met with the Hutchinson County Drainage Administrator at the Albrecht and Stoebner approaches. The Kulm Township Board of Supervisors posted no notice of this meeting.

7. It was determined at the above meeting that the culverts in both the Albrecht and Stoebner approaches were too small and were restricting the flow of water. It was also determined that the location of the Stoebner approach was blocking the flow of water and the water was affecting the right-of-way and neighboring properties.

8. As a result of this meeting the Albrecht approach culvert was replaced with a larger culvert. Also, the Stoebner approach was re-located approximately one half-mile to the east, and constructed with a larger culvert.

9. On October 31, 2016, Deborah Nyenhuis submitted an open meetings complaint to Hutchinson County State's Attorney Glenn Roth.

10. On November 8, 2016, State's Attorney Roth forwarded the complaint to the Commission pursuant to SDCL 1-25-6(3).

11. Ms. Nyenhuis's complaint alleged that the Kulm Township Board of Supervisors met on July 20, 2016, without providing notice to the public as required by SDCL 1-25-1.1.

12. SDCL 1-25-1.1 states in pertinent part: "[a]ll public bodies, except the state and each state board, commission, or department as provided in § 1-25-1.3, shall provide public notice, with proposed agenda, that is visible, readable, and accessible for at least an entire, continuous twenty-four hours immediately preceding any meeting, by posting a copy of the notice, visible to the public, at the principal office of the public body holding the meeting...."

13. In responding to the complaint, the Kulm Township Board of Supervisors asserted that the notice provision of SDCL 1-25-1.1 did not apply to the meeting held on July 20, 2016. The Board of Supervisors argued that it was carrying out its statutory duty imposed by SDCL 31-13-1 and SDCL 31-14-33, and therefore the meeting was not one which required public notice.

14. SDCL 31-13-1 states in pertinent part: "[t]he township supervisors shall construct, repair, and maintain all of the township roads within the township..."

15. SDCL 31-14-33 states: "[t]he township board of supervisors shall have each culvert on the secondary highways within the township annually inspected and, if necessary, repaired."

16. The Board of Supervisors also indicated that at their annual meeting they received a complaint that water was not draining properly on real property in the immediate vicinity of the Albrecht and Stoebner approaches. The Board of Supervisors indicated they had concerns about the integrity of township roads due to improperly draining water.

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 Kulm Township Board of Supervisors, as the governing body of Kulm Township, Hutchinson 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 plain language of SDCL 1-25-1 creates an exemption from the open meetings requirements of SDCL ch. 1-25 for township supervisors that “meet solely for purposes of implementing previously adopted public policy, carrying out ministerial functions of that township, ... or undertaking a factual investigation of conditions related to public safety....”

3. The South Dakota Legislature has previously adopted public policy of the state requiring township supervisors to inspect each culvert on township secondary roads, and to repair and maintain all roads within a township. SDCL 31-13-1 and 31-14-33.

4. Water that is improperly draining through and alongside township roads could potentially lead to a degradation of the integrity of those roads. The potential loss of integrity on a township road is a public safety concern for a township board of supervisors.

5. Based upon the materials in the record and the testimony presented at the hearing of this matter, the Commission concludes the Kulm Township Board of Supervisors did not violate the South Dakota Open Meetings Laws. The exemption granted in SDCL 1-25-1 applies to the facts of this matter; the meeting of the Kulm Township Board of Supervisors held on July 20, 2016, was not a meeting that required public notice pursuant to SDCL 1-25-1.1.

6. 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 Kulm 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 **Krull** (Chair), **Reedstrom**, **Rothschadl, & Steele**.

Commissioner **Sovell** was absent from the meeting when the matter was heard and abstained from any final action by the Commission.