

May 5, 2015

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN)	FINDINGS OF FACT,
MEETINGS COMPLAINT 2014-01;)	CONCLUSIONS OF LAW AND
LINCOLN TOWNSHIP, LINCOLN)	REPRIMAND
COUNTY SOUTH DAKOTA)	

The above captioned matter was heard before the South Dakota Open Meetings Commission (Commission) on November 21, 2014. Paul Tuntland, Complainant, appeared in person along with his counsel, Benjamin Kleinjan. Lincoln Township, Respondent, was represented by its Chairman, Ric Moren, who also appeared with counsel Douglas Deibert. Prior to the hearing, the Commission reviewed the written submission 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 Lincoln Township is a township located in Lincoln 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 Lincoln Township Board of Supervisors is a public body elected pursuant to applicable provisions of state law to govern Lincoln Township.

3. On June 3, 2014, Mr. Paul Tuntland submitted a complaint to Lincoln County States Attorney Thomas Wollman regarding the Lincoln Township Board of Supervisors.

4. On July 2, 2014, Assistant Attorney General William Golden, having reviewed the complaint on behalf of the Lincoln County States Attorney's Office, forwarded the complaint to the Commission pursuant to SDCL 1-25-6(3).

5. Mr. Tuntland's complaint raised open meeting issues regarding the Township Board's entry into executive session during their March 2014 meeting, as well as the Township's failure to publicly notice an agenda in a timely manner. Mr. Tuntland's complaint also raised issues regarding Township elections, the failure to routinely hold an October meeting of the Township Board, and other issues that had been previously raised in a lawsuit filed by Mr. Tuntland against the Township.

6. On September 15, 2014, Douglas Deibert submitted the written response of the Township Board of Supervisors for consideration by the Commission.

7. The Township Board held a meeting on the afternoon of Tuesday March 4, 2014.

8. The agenda for the meeting was emailed by Mr. Moren at 5:31 p.m. on Monday, March 3, 2014. The agenda indicated the meeting was to begin at 1:00 p.m. The Township Board admitted that the agenda was not made

publically available and visible for at least 24 hours in advance of the meeting at the principal office of the Township.

9. The Township Board also admitted that the Board had not previously noticed and posted an agenda for any Township meetings. The Board asserted that it had been unaware of the notice and posting requirements of state law.

10. The agenda for the March 4 meeting indicated that an executive session was to be held as the last agenda item for the meeting. When Mr. Tuntland arrived at the meeting he was informed that he could not enter the meeting room. Mr. Tuntland claims he arrived at the meeting shortly before 1:00 p.m., and was excluded from the room at that time.

11. The Township Board asserts that the meeting was called to order at 1:00 p.m., and that at that time the agenda was amended to move the scheduled executive session from the end of the meeting to the beginning. Immediately thereafter, according to the Board, a motion was entertained to approve the agenda, and a proper motion was made to enter executive session.

12. 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 Lincoln Township Board of Supervisors, as the governing body of Lincoln Township, 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 Open Meetings Commission does not have jurisdiction to take action on matters outside of the requirements of SDCL ch. 1-25.

3. The Open Meetings Commission may not take action based upon general allegations of past conduct. The Commission believes that sufficient factual information must be pled in a complaint that would put the responding public body on notice as to what violation is alleged and when the violation is alleged to have occurred. Absent these specific facts, a public body is not provided proper notice and an adequate opportunity to defend itself and its actions.

4. The Commission concludes that there is insufficient factual information in the record to make a determination regarding the alleged improper entry into executive session during the March 4, 2014, meeting of the Lincoln Township Board of Supervisors.

5. According to the provisions of SDCL 1-25-1.1, “public bodies shall provide public notice, with proposed agenda, that is visible, readable and accessible for at least an entire twenty-four hours before any meeting, by posting a copy of the notice, visible to the public, at the principal office of the public body holding the meeting. . . .”

6. The Commission concludes that the Lincoln Township Board of Supervisors violated the provisions of SDCL 1-25-1.1 in that the Board held a

meeting on March 4, 2014, for which an agenda was not timely posted as required by statute.

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 Lincoln Township, Lincoln County South Dakota, for violating the South Dakota Open Meetings Laws in that the Township failed to provide timely and adequate notice of a meeting of the Township Board of Supervisors held on March 4, 2014.

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