

August 27, 2013

STATE OF SOUTH DAKOTA

SOUTH DAKOTA OPEN MEETING COMMISSION

MATTER OF OPEN MEETINGS	)	
COMPLAINT 13-01, MATHEWS	)	
TOWNSHIP, WILLIAM DRISCOLL, GREG	)	FINDINGS OF FACT,
ALBRECHT, GALE LARSON, AND	)	CONCLUSIONS OF LAW
WILLIAM ALBRECHT	)	AND REPRIMAND
	)	
	)	

This matter came on for hearing on the 28th day of June, 2013, before the Open Meetings Commission for the State of South Dakota (OMC), in Huron, South Dakota. Mary Lee, appearing in person along with her counsel, Don McCarty of McCann, Ribstein, Hogan & McCarty, Brookings, South Dakota. The Respondents William Driscoll, Greg Albrecht, and William Albrecht, appearing in person along with their counsel, Gary W. Schumacher, Wilkinson & Wilkinson, De Smet, South Dakota and Respondent Gale Larson, appearing in person without counsel and being prepared to present their respective cases and advocate their particular positions, and the OMC having considered the same along with all pleadings and papers on file herein, enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Any Finding of Fact erroneously designated as a Conclusion of Law and any Conclusion of Law erroneously designated as a Finding of Fact shall be considered as if properly designated.

2. Mathews Township is located in the State of South Dakota which is organized and operated pursuant to South Dakota Codified Law.

3. Mary Lee was the Mathews Township Clerk in 2012. In early December, 2012 she contacted the Kingsbury County States Attorney seeking to report an open meetings violation based a series of acts which took place in the summer and fall of 2012.

4. On 28th day of December, 2012 Mary Lee signed a complaint alleging violations of SDCL 1-25-1 and SDCL 8-3-3. The complaint alleged that William Driscoll, Greg Albrecht, William Albrecht, and Gale Larson violated the open meetings laws of the State of South Dakota.

5. The Complaint filed by the Kingsbury County States Attorney on behalf of Mary Lee alleged that on or about October 24, 2012 and October 30, 2012 the Defendants did commit the public offense of Violation of Open Meeting of Public Agency (SDCL 1-25-1) in that they did, as members of the board of supervisors and treasurer of Mathews Township, Kingsbury County, South Dakota, participate in an official meeting of Mathews Township, which meeting failed to provide notice to the public as required under SDCL 1-25-1 and SDCL 8-3-3 and 4, contrary to statute in such case made and provided against the peach and dignity of the State of South Dakota.

6. In the spring of 2011, culverts washed out near the intersection of 219th Street and 428th Avenue in Mathews Township. Prior to the wash out there were two culverts at the location. One culvert was 8 foot and the other was 3 foot.

7. On October 24, 2012 a meeting was held by the Township Board of Supervisors. All parties concede that proper public notice was not published prior to the October 24, 2012 meeting. Further, all parties concede that the October 24, 2012 meeting did constitute a meeting of the Township Board and said meeting without proper notice would violate the open meetings laws of the State of South Dakota.

8. On or about October 30, 2012, a site visit was attended by Gale Larson, William Driscoll, Greg Albrecht, and Todd Albrecht; at which time alternatives were discussed relating to the culverts and rip rap. The Township Board members concede that no notice was given to the public about this meeting and that a quorum of the Township Board was present.

9. Based on the above and other matters relating to issues regarding the culverts, Gale Larson submitted his resignation to the Township Board. The resignation from the Township Board was accepted in January 2013.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact the Court enters the following Conclusions of Law;

1. Any Finding of Fact erroneously designated as a Conclusion of Law and any Conclusion of Law erroneously designated as a Finding of Fact shall be considered as if properly designated.

2. The OMC has both personal jurisdiction over the parties and subject matter jurisdiction for purposes of these proceedings.

3. The purpose of the open meeting law is to prohibit actions being taken at secret meetings where it is impossible for the interested public to become fully informed and to detect improper influences. Olson v. Cass, 349 N.W.2d 435 (S.D. 1984).

4. The OMC finds the actions of the Respondents constitute a violation of the open meeting law and should be reprimanded in accordance with the applicable statutes.

REPRIMAND

Mathews Township, William Driscoll, Greg Albrecht, and William Albrecht are hereby reprimanded for violations of the Open Meeting law on October 24 and October 30, 2012.

Entered by Open Meeting Commissioners Steele (Chairman), Krull, Reedstrom, Rothschadl, and Sovell.