

SOUTH DAKOTA OPEN MEETING COMMISSION

MINUTES OF MEETING

June 28, 2013

Huron City Hall

Members present: John Steele, Aurora County States Attorney (Chair); Lisa Rothschadl, Bon Homme County State's Attorney ; Mark Reedstrom, Grant County State's Attorney; Kevin Krull, Meade County State's Attorney; Emily Sovell, Sully County State's Attorney.

Chairman John Steele called the meeting to order at 1:00 pm and welcomed new OMC member Kevin Krull.

The following is a summary (not verbatim) of the matters discussed.

In the Matter of Open Meeting Complaint 13-01, Mathews Township.

Attorney Gary Schumacher appeared on behalf of the Mathews Township officers. Attorney Don McCarty appeared on behalf of the Complainant Mary Lee.

Ms. Lee gave a brief statement, explaining that she was the former clerk for the township and had resigned. She stated that two board members were making township decisions without calling official meetings.

Mr. McCarty further explained. The allegations stem from meetings dealing with FEMA funding for the installation of culverts, changes in the size of the proposed culverts, and the decisions on ultimate installation of the culverts. Meetings or discussions were held by a quorum of the Township Board on October 24, 2012 and on October 30, 2012. There was no agenda posted for these events. These were the allegations referred to the OMC by the Kingsbury County State's Attorney.

Mr. McCarty referred to other township board discussions concerning the culverts that came to light or occurred after the Complaint was filed with Kingsbury County State's Attorney and referred to the OMC. After the complaint and referral was sent to the OMC by the State's Attorney, the State's Attorney sent in more information that included other dates, but there was no additional open meeting complaint.

Chairman Steele accepted an Affidavit of Gale Larson for the record.

Mr. Schumacher presented a three page exhibit pertaining to a meeting on February 12, 2012 concerning fire equipment and payments that Mary Lee had made as clerk for fire expenses. It was accepted for the record.

Mr. Schumacher asked Mathews Township Treasurer Bill Albrecht to give a statement. Bill Albrecht stated that it was not the practice of the township to post meeting notices, but they are doing so now.

Bill Albrecht provided background on the reasoning for the change in size of the culverts, the financial ramifications to the township, and the FEMA requirements. He stated that the decisions are made based on sound fiscal decision making. Upon questioning, he stated that he was not present at the October 30 gathering, but believed 3 board members were there. As the treasurer he is not a voting member.

Upon questioning, Bill Albrecht stated that he collected information on the costs for the culverts and called township board member Driscoll. He said that Driscoll made a decision on culvert size in about mid-October and some work was already done by October 30.

Mr. McCarty responded. He stated that the public was required to leave the October 24 meeting. He also referred to events other than the October 24 and October 30 gatherings, noting that the State's Attorney had sent in material that includes references to them.

In response to general OMC questioning, township board member Greg Albrecht was in the audience and confirmed that the three township board members were at the site of the culverts on October 30 and discussed the culverts. He just happened to be going by and stopped at the site. There was no official meeting called.

Upon motion by Sovell, which was seconded, the OMC voted to accept a copy of a transcript of the February 14, 2013 Mathews Township Meeting.

Reedstrom noted that allegations were made that there was a pattern of failing to post an agenda and notice of meetings. After the complaint was filed more information was sent into the OMC. Discussion was held as to whether the OMC could consider additional violations. Although the State's Attorney sent these matters in, there was not a specific complaint and referral to the OMC on additional dates.

Reedstrom moved to restrict deliberations to the two dates alleged in the complaint. Rothschadl seconded. The OMC voted in favor.

Reedstrom moved to find that there were violations of SDCL 1-25-1 (lack of notice) and based on admissions of the principal parties it is clear the township should be publicly reprimanded. Sovell seconded. The motion carried unanimously.

The parties left the room and later returned to discuss the timing of findings. Mr. McCarty is to file proposed Findings of Fact in two weeks; Mr. Schumacher is to respond two weeks thereafter.

In the Matter of Open Meeting Complaint 13-02, Leola School District.

Attorney Rod Freeman appeared on behalf of the School District and its board. Jerome Mack, the Complainant, appeared on behalf of himself.

Mr. Mack provided a statement. This allegation concerns a situation where the Leola School Board scheduled two meetings for the same day. One was for the Superintendent's evaluation at 4:30 pm and an executive session was planned. The other agenda was for a general meeting at 6:00 pm.

A School Board member had resigned the same afternoon and the resignation issue was addressed during the 4:30 meeting. Mack stated that the resignation was discussed without giving 24 hour notice to the public. Further, the minutes give details as to the application process, but the details weren't actually discussed in public. Mack concluded that these details must have been discussed during the executive session part of the 4:30 meeting-- and the executive session was therefore improper.

Mr. Freeman stated that the School Board changed the agenda due to the email resignation that day and considered the resignation at 4:30 in public. The Board did discuss the options for how to fill the vacancy. He had given the advice to include public notice of the vacancy and it was included in the minutes.

He stated that there is a distinction between "proposed agendas" which require posting 24 hours in advance and final agendas which are adopted at a meeting. He stated that 24 hour advance notice was not required for adding the School Board member resignation to the final agenda at the 4:30 meeting. He relied on the *Molden v. Grant Deuel School District* decision issued by Judge Timm in 2012. He also relied on HB 1158 which was amended during the legislative session specifically to add "proposed agenda" to references to the date, time, and place of meetings.

Mr. Freeman further stated that the executive session was limited to evaluation of the Superintendent.

Freeman referred to the agendas for the 4:30 meeting and the 6:00 regular meeting (Exhs. 1 and 2) which were included in his filed response to the Complaint.

Upon questioning, Mr. Mack advised that no members of the public were at the 4:30 meeting. He was not there.

Mr. Freeman stated that the only public part of the 4:30 meeting was the acceptance of the School Board member's resignation and discussion of procedure. The resigning School Board member was not there.

Mr. Mack stated that adding agenda items at the last minute should only be for an emergency. Further that the Board had acted fast to limit the Board member's voice at the later School Board meeting at 6 pm.

Upon question, Mr. Freeman stated that the resignation was not an emergency.

Following discussion, Reedstrom moved to find that there was no violation as to either of the two counts in the Complaint. Second by Krull.

A roll call vote was made, with Reedstrom, Krull, Sovell, and Rothschadl voting "aye" and Steele voting "no."

Mr. Freeman is to file proposed Findings of Fact in two weeks; Mr. Mack has two weeks to respond.

Approval of December 10, 2012 minutes.

Motion to approve minutes from Rothschadl and seconded by Mark Reedstrom. A roll call vote was made, with Reedstrom, Sovell, Steele and Rothschadl voting "aye" and Krull abstaining.

Legislative Report.

Diane Best pointed out that the legislature enacted three pieces of legislation dealing with open meetings and they are effective as of July 1. HB 1112 amends SDCL 1-25-1 by providing that it is not an official meeting when a quorum of 3 member boards of townships, road districts, and third class municipalities engage in ministerial duties i.e. day to day work that employees would normally do in larger governmental bodies. An example is replacement of a stop sign. HB 1158 amends SDCL 1-25-1.1 by providing that all agendas must include the date, time, and place of the meeting involved.

Recent Litigation.

The OMC discussed Judge Timm's decision in *Molden v. Grant Deuel School District*. The decision was summarily affirmed by the South Dakota Supreme

Court last winter. Judge Timm had found that a public body can add items to its proposed agenda at the beginning of a meeting before it adopts the final agenda. This is different than the OMC past decisions holding that items cannot be addressed at a meeting unless they are on the proposed agenda and posted 24 hours in advance of the meeting.

Brochure Update.

Diane Best explained that a brochure is being prepared that reflects the status of the *Molden* case and the recent legislation.

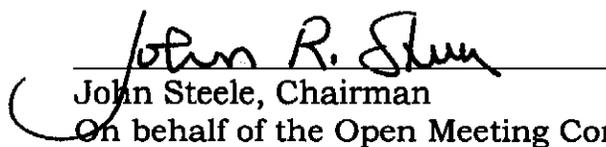
Scheduling.

The next meeting was tentatively set for a teleconference on August 23.

Adjournment.

Sovell moved to adjourn. Reedstrom seconded the motion. All voted in favor.

Approved on August 23, 2013


John Steele, Chairman
On behalf of the Open Meeting Commission