

SOUTH DAKOTA OPEN MEETINGS COMMISSION

MINUTES OF MEETING

May 5, 2015

Deadwood, South Dakota

Members participating: Emily Sovell, Sully County State's Attorney (Chair); John Steele, Aurora County State's Attorney; Kevin Krull, Meade County State's Attorney; Mark Reedstrom, Grant County State's Attorney; and Lisa Rothschadl, Bon Homme County State's Attorney. Steve Blair and Jenna McFarlane, Office of the Attorney General, assisted the Commission.

Chairwoman Emily Sovell called the meeting to order at 2:00 p.m. Mr. Reedstrom moved to approve the proposed agenda; Mr. Steele seconded. All members voted in favor of the motion to approve the proposed agenda.

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

November 21, 2014 minutes

Mr. Krull moved to approve the draft minutes of the November 21, 2014 meeting. Mr. Reedstrom seconded. All members voted in favor of the motion to approve the minutes.

In the Matter of Open Meeting Complaint 14-05 Imlay Township Board of Supervisors

Mr. Doug Albertson appeared as the Complainant. Attorney Michael Hickey appeared on behalf of the Imlay Township Board of Supervisors. Martha Whitcher, Clerk/Treasurer, and Julian Whitcher, Supervisor, of the Imlay Township Board of Supervisors, also appeared.

Mr. Albertson stated that on March 14, 2014, the Imlay Township Board held a meeting at which Mr. Albertson requested that two new auto gates (cattle gates) be installed on Bouquet Table Road. According to Mr. Albertson the Board told Albertson the new auto gates could be placed at Conata Ranch's expense. Mr. Albertson worked for Conata Ranch. The Board also indicated the Board needed time to research the specifications any auto gate must meet. On March 17, 2014, Imlay Township held another meeting at which Mr. Albertson was informed of the county requirements the auto gates must meet. The Board also informed Albertson that Conata Ranch would have to cede ownership of the gates to the Township, and that Monte Whitcher, Supervisor and maintenance worker of Imlay Township, must be present to supervise the installation.

Mr. Albertson further stated that on June 22, 2014, the auto gates were installed by him and Monte Witcher, and that during the installation the Township's loader was used. Thereafter, early in July 2014, Mr. Albertson received a bill from the Board for installation of the auto gates totaling \$1,500.00. On August 22, 2014, Mr. Albertson called the Township Board Chair, Jim Witcher, to question how the amount of the installation bill was determined. According to Albertson, Mr. Witcher responded that the rate charged was what the Board agreed to. On September 11, 2014, Mr. Albertson sent a letter to the Board requesting a special meeting. A special Imlay Township Board meeting was held on November 17, 2014, at which the Board voted to remove the new auto gates and sell them to pay the unpaid bill for installation of the gates.

In summary, Mr. Albertson stated that he was not aware the Township Board would be charging \$300.00 per hour for the 5 hours of work performed by Monte Witcher. Mr. Albertson concluded that the rate was established by the Board outside of a properly noticed public meeting.

Mr. Hickey objected during Mr. Albertson's presentation asserting for the record that the Commission did not have jurisdiction over the amount billed by the Board for the auto gate installation.

Mr. Steele inquired of Mr. Albertson as to what specific violation of the open meeting laws the Board was alleged to have violated. Mr. Steele stated the Pennington County State's Attorney had concluded that Ms. Witcher, the Township Clerk, had based the billing rate on FEMA guidelines. Mr. Steele asked Mr. Albertson if he had reason to believe that was not how the rate was determined. Mr. Albertson stated there was no meeting held that he is aware of where the rate was formally determined.

Ms. Sovell asked Mr. Albertson if he was aware if there had historically been meetings discussing similar bills. Mr. Albertson responded by saying the Township had not previously done similar work.

Mr. Krull inquired of Mr. Albertson whether Jim Witcher indicated if the other Township Board members had voted for the rate charged for the auto gate installation. Mr. Albertson responded that Jim Witcher said "I'm one person."

Mr. Krull also inquired whether Martha Witcher was a voting member of the Board, and Mr. Albertson was unsure of her voting status.

Mr. Hickey, representing Imlay Township, started his presentation by noting the Commission is limited to reviewing potential violations of the state open meetings laws. Mr. Hickey asserted that no such violations were before the Commission through Mr. Albertson's complaint.

Next, Mr. Hickey asserted that Mr. Albertson could not appear on behalf of Conata Ranch. Mr. Hickey stated that Mr. Albertson was not an attorney and thereby, according to state case law, could not represent Conata Ranch at the proceedings.

It was stated that Imlay Township held two properly noticed meetings where the potential installation of the auto gates was discussed. First, one meeting was held on March 14, and the second was held on March 17, 2014. Mr. Hickey indicated those meetings were properly noticed.

Further, according to Mr. Hickey, a lawsuit regarding the amount of the bill charged to Conata Ranch was pending before a court in Pennington County. Mr. Hickey asserted the authenticity or legality of the bill charged was not before the Commission.

Mr. Hickey stated that at no point did a quorum of the Imlay Township Board meet to discuss the amount of the bill submitted to Conata Ranch. According to Mr. Hickey, all meetings were properly noticed, and there had been no showing made that a meeting was held without proper notice. The calculation of the bill sent to Conata Ranch was a ministerial act carried out by the Township Clerk consistent with previous discussions of the Board.

Mr. Krull inquired of Ms. Whitcher whether she was involved in the discussion between Jim Whitcher and Mr. Albertson. Ms. Whitcher indicated she was not, but that Jim Whitcher did call her and discuss how she arrived at the total amount that was billed to Conata Ranch.

Ms. Sovell asked Ms. Whitcher if there was any subsequent meeting where a quorum of the Board met and discussed the bill that was sent to Conata Ranch. Ms. Whitcher indicated there was no such meeting; the billing had been discussed previously at the noticed meetings. Ms. Whitcher indicated the Board viewed the auto gate installation as "specialty work," and that it had been discussed that the total amount of the bill would be determined after it was known what Township equipment would be involved.

Ms. Rothschadl questioned Ms. Whitcher regarding the use of the FEMA guidelines to establish the hourly amount billed. Ms. Whitcher indicated that she called the County Auditor and the County Highway Department for advice. Ms. Whitcher felt the FEMA scale was a good resource to calculate the bill.

In rebuttal to the Township's presentation, Mr. Albertson stated he was simply following the process that had been explained to him regarding any grievance he had against Imlay Township.

The Commission went into deliberations. There was a discussion held among the Commission members regarding whether an individual who was not an attorney could represent an entity. Mr. Reedstrom indicated he felt the Commission did not need to reach that issue in that it was relatively undisputed from the evidence presented that no open meetings law violation occurred. Ms. Sovell agreed there was no violation. Mr. Steele and Ms. Rothschadl also agreed there was no violation.

Mr. Steele moved to find no violation against Imlay Township. Ms. Rothschadl seconded. Roll call was made and Ms. Rothschadl, Mr. Steele, Mr. Reedstrom, Ms. Sovell and Mr. Krull voted aye.

Steve Blair was directed to draft findings and conclusions for the board.

In the Matter of Open Meeting Complaint 14-01, Lincoln Township

The Commission considered the proposed Findings of Fact and Conclusions of Law drafted in regards to this matter. Mr. Krull made a motion to approve the Findings of Fact and Conclusions of Law which was seconded by Mr. Reedstrom. All members voted in favor of adopting the Findings and Conclusions. Roll call was made and Ms. Rothschadl, Mr. Reedstrom, Mr. Steele, Ms. Sovell and Mr. Krull voted aye.

In the Matter of Open Meeting Complaint 14-03, Freeman School Board

The Commission considered the proposed Findings of Fact and Conclusions of Law drafted in regards to this matter. Ms. Sovell stated she had read the comments of Mr. Chris Eisenbeis in respect to the proposed Findings and Conclusions and agreed with the way the Findings and Conclusions had been drafted. Mr. Reedstrom made a motion to approve the Findings of Fact and Conclusions of Law which was seconded by Ms. Rothschadl. Roll call was made and Ms. Rothschadl, Mr. Reedstrom, Ms. Sovell and Mr. Krull voted aye. Mr. Steele voted nay.

In the Matter of Open Meeting Complaint 14-04, Plankinton School Board

The Commission considered the proposed Findings of Fact and Conclusions of Law drafted in regards to this matter. Mr. Steele recused himself from consideration of the Findings and Conclusions. Mr. Reedstrom made a motion to approve the Findings Conclusions which was seconded by Mr. Krull. Roll call was made and Ms. Rothschadl, Mr. Reedstrom, Ms. Sovell and Mr. Krull voted aye. Mr. Steele abstained.

Preparation of the minutes.

A discussion was had regarding preparation of the minutes of the Commission's meetings. South Dakota statutes require the minutes to be posted within ten business days of the meeting. However, the statute allows any audio of the meeting to be posted within five days in lieu of posting of drafted minutes. Posting of any audio of the Commission's meetings was discussed, which would allow more time to be taken to prepare the draft minutes. Following the discussion of the Commission members it was decided that minutes would be prepared within the ten days unless it was necessary to post the audio in order to allow more time to prepare the minutes.

No motion was required.

2015 legislation

Mr. Blair brought to the attention of the Commission that House Bill 1125 was signed by the Governor and will become effective July 1. The bill revised State law to require the posting of a copy of a proposed agenda, in a visible, readable and accessible location at the principle office of the public body for at least an entire – continuous – twenty-four hours immediately preceding the noticed meeting.

Mr. Blair also noted that House Bill 1153 was brought to the Legislature but did not pass. The bill would have made it clear that boards and commissions should not discuss official business over email, text messaging, chat service, and other similar media.

No motion was required; this was an informational item.

Future legislation

Mr. Blair informed the Commission that if they had proposals for 2016 legislation regarding the open meeting laws the Attorney General would consider bringing that legislation on the Commission's behalf.

No motion was required; this was an informational item.

Potential revision to Open Meetings Pamphlet

Mr. Blair informed the Commission that the last update to the Open Meeting pamphlet was in 2013. All of the stake holders have been contacted and are in the process of submitting potential revisions to Mr. Blair. It was requested that if any of the Commission members believe any revisions need to be made they should submit those to Mr. Blair.

No motion was required; this was an informational item.

Adjournment.

A motion to adjourn was made by Mr. Steele, seconded by Mr. Reedstrom, at approximately 3:19 p.m. All voted in favor and the Commission adjourned.

Approved on 12/16, 2015.

A handwritten signature in black ink, appearing to read "Emily Soyell", is written over a horizontal line. The signature is stylized and cursive.

Emily Soyell, Chairwoman

On behalf of the Open Meeting Commission