

December 18, 2018

STATE OF SOUTH DAKOTA  
OPEN MEETINGS COMMISSION

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IN THE MATTER OF OPEN	)	OMC 2018-01
MEETINGS COMPLAINT AGAINST	)	
POTTER COUNTY COMMISSION –	)	FINDINGS OF FACT,
POTTER COUNTY	)	CONCLUSIONS OF LAW, AND
	)	DECISION

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The above captioned matter was heard before the South Dakota Open Meetings Commission (Commission) on June 7, 2018. Complainant, the Potter County News, appeared through its Editor, Molly McRoberts. The Potter County Commission appeared through Commissioner Bill Frost. Also present for the hearing was Potter County State’s Attorney Craig Smith. Prior to the hearing, the Commission reviewed the written submissions of the parties, as well as, any other exhibits, 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 Potter County is a political subdivision of the State of South Dakota created by the Legislature and duly organized and operating according to applicable provisions of South Dakota Codified Law.

2. The Potter County Commission met in a public meeting on Thursday, December 28, 2017. All Commissioners were present.

3. Towards the end of this meeting the Potter County Sheriff joined the meeting and briefly discussed that the City of Gettysburg had hired a new Chief of Police. The Sheriff was not on the agenda for the meeting. When asked if he would like to be on the agenda, the Sheriff responded “[I will] talk to you guys after the meeting is adjourned.” The County Commission decided to continue the discussion with the Sheriff following the meeting.

4. The December 28, 2017, meeting was audio recorded by the Potter County News. The Potter County News’ staff member left along with the County Auditor when the meeting was adjourned.

5. After adjournment, the County Commission members and the Sheriff remained in the meeting room. The Commission and the Sheriff briefly discussed the hiring of a Chief of Police by the City of Gettysburg and county wide law enforcement matters. The majority of the discussion consisted of a casual conversation about personal matters.

6. On January 4, 2018, Molly McRoberts, Managing Editor of the Potter County News, filed an open meeting complaint against the Potter County Commission.

7. Ms. McRoberts’ complaint specifically alleged that after the County Commission’s official meeting adjourned on December 28, 2017, a quorum of the County Commission met with the Sheriff and discussed official county business outside of a properly noticed and public meeting in violation of SDCL 1-25-1.

8. On January 31, 2018, the Potter County State's Attorney forwarded the complaint to the Commission pursuant to SDCL 1-25-6 (3) for the Commission's review and action.

9. On April 13, 2018, the County Commission responded to the complaint. The County Commission acknowledged that the Commission members and the Sheriff held an impromptu meeting outside of a properly noticed public meeting. The County Commission admitted that official business of the county, i.e. county law enforcement, was briefly discussed.

10. Any Findings of Fact more appropriately labeled as a Conclusion of Law are hereby re-designated as such and incorporated below therein.

#### CONCLUSIONS OF LAW

1. The Potter County Commission, as the governing body of Potter 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. SDCL 1-25-1 requires that "[t]he official meetings of...any public body of the state or its political subdivisions are open to the public unless a specific law is cited by the state, the political subdivision, or the public body to close the official meeting to the public...."

3. SDCL 1-25-1 defines an official meeting as "any meeting of a quorum of a public body at which official business of that public body is discussed or decided, or public policy is formulated, whether in person or by means of teleconference."

4. 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 ....”

5. After adjournment of the County Commission’s noticed December 28, 2017, public meeting, a quorum of the County Commission was present and discussed official county business (i.e. county wide law enforcement issues) with the Potter County Sheriff.

6. SDCL 1-25-1 prohibits a quorum of members of a public body from discussing official business outside a properly noticed public meeting.

7. SDCL 1-25-1.1 requires that all local government public bodies provide public notice of their meetings.

8. Based upon the materials in the record, and the testimony presented at the hearing of this matter, the Commission concludes the Potter County Commission did violate the provisions of SDCL ch. 1-25 when a quorum of the County Commission engaged in a discussion of county business outside of a properly noticed public meeting.

9. Any Conclusions of Law more appropriately labeled as Findings of Fact are 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 the Potter

County Board of Commissioners in that a quorum of the County Commission engaged in a discussion of official county business outside of a properly noticed and public meeting in violation of SDCL 1-25-1 and 1-25-1.1.

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