

December 9, 2011

STATE OF SOUTH DAKOTA
OPEN MEETING COMMISSION

IN THE MATTER OF OPEN MEETING)	FINDINGS OF FACT,
COMPLAINT 11-04, SILVER CREEK)	CONCLUSIONS OF LAW
TOWNSHIP, SANBORN COUNTY,)	AND REPRIMAND
SOUTH DAKOTA)	

INTRODUCTION

Pursuant to SDCL 1-25-1 and SDCL 1-25-1.1 any meeting of a public body to discuss official business must be preceded by proper notice to the public. Notice and an agenda must be provided to the public at least twenty-four (24) hours prior to regular meetings. Furthermore, the required notice must be posted in a location visible to the public at the principal office of the public body holding the meeting. The same rule applies to special meetings to the extent that the circumstances permit.

DISCUSSION AND DECISION

This matter came before the OMC following the filing of a complaint dated June 27, 2011 and signed by Donald Peterson. The complaint alleged a violation of the open meeting requirements found at SDCL 1-25-1.1. Specifically, the complaint alleged that the Board of Supervisors for Silver Creek Township held a meeting on or about May 2, 2011 without posting notice of the meeting or otherwise providing public notice.

The record indicates that two township supervisors, Mark Snedeker and Robert Davis, discussed a road maintenance situation without calling a meeting. Mr. Snedeker and Mr. Davis filed a letter and also appeared before the OMC. They take the position that they were not required to post notice or an agenda or otherwise comply with the open meeting laws since this was an informal discussion where they took action to handle a road maintenance matter. The claim is that two members of a three-member township board may discuss township road maintenance without calling an official meeting when the issue at hand involves an expenditure of less than \$2500. They rely on state law and the Manual for the Association of Towns and Townships.

After the OMC met on this matter and heard the presentations of Mr. Snedeker and Mr. Davis, the OMC obtained a copy of the Manual and also asked all parties to provide any specific citations that would address this issue. No responses were received.

After reviewing this matter, it is apparent that regardless of the sum of money at issue, townships are required to comply with SDCL 1-27-1.1 and post agendas and otherwise provide notice of any meetings where official business will be discussed. Silver Creek Township has therefore violated the law and should be reprimanded.

FINDINGS OF FACT

1. Silver Creek Township has a three member board of supervisors. Mr. Snedeker and Mr. Davis are two of the township supervisors.

2. On or about May 2, 2011, Mr. Snedeker and Mr. Davis discussed a road maintenance issue to address water flows relating to a township road. They agreed to have a ditch trenched across the road to handle drainage and planned to install a culvert in the future. Because spring flows were occurring at the time, it was necessary to address the effect that water flows would have on this road (and the effect that the road would have on the water flows) in a timely manner. However the discussion was made at a time convenient for Mr. Snedeker and Mr. Davis. Mr. Davis stated that the meeting itself was not an emergency meeting.

3. No supervisor or clerk for Silver Creek Township posted an agenda or otherwise provided public notice before the discussions were held between Mr. Snedeker and Mr. Davis.

4. Mr. Snedeker and Mr. Davis assert that the monetary sum involved in their decision-making was less than \$2500. The OMC does not need to address whether the sum was more or less than \$2500. A reprimand is warranted regardless of the sum involved.

5. The discussions between Mr. Snedeker and Mr. Davis were for official township business.

CONCLUSIONS OF LAW

1. Silver Creek Township is an entity subject to the provisions of the Open Meeting Law, SDCL ch. 25. Any two members constitute a quorum. SDCL 8-5-3.

2. Silver Creek Township is required to prepare and post the notice of its meetings, with a proposed agenda, at least 24 hours prior to any meeting pursuant to SDCL 1-25-1.1 (or in the case of special or rescheduling meetings to comply to the extent circumstances permit). These requirements are in addition to the publication for annual meetings and any other specific notice provisions in SDCL ch. 8-3 or ch. 8-5.

4. Silver Creek Township asserts that township supervisors are exempt from the open meeting requirements when two supervisors meet for township road maintenance items of \$2500 or less. Further, Silver Creek Township tells the OMC that this is common practice for townships.

5. The OMC has given careful review to this issue, including review of various statutes relating to townships and responsibilities over roads. The OMC has been unable to find any law that would provide an exemption from the open meeting law when two supervisors of a three-member board meet to discuss road maintenance items of less than \$2500.

6. There are certain laws applying to townships that provide for abbreviated procedures, depending on the monetary amount. However, none of the statutes at issue apply here. For example, SDCL 8-9-3 provides that township supervisors may purchase or lease a road grader and expend up to \$15,000 without the approval of the voters of the township. This is an exemption from obtaining permission from the voters. It does not constitute an exemption from the public notice procedures in SDCL ch. 1-27.

7. SDCL 31-13-27 provides that snow removal operations may be conducted without complying with the bid laws when the sum at issue is \$3500 or less. It is conceivable that the township mistakenly relies on this statute. However, an exemption from the bid laws is not the same as an exemption from the open meeting law.

8. A reprimand must be issued since there was a violation of SDCL 1-27-1.1 and there is no exemption that applies.

REPRIMAND

Silver Creek Township is hereby publicly reprimanded insofar as a quorum of its officers (Mark Snedeker and Robert Davis) violated the South Dakota Open Meeting Law.

Issued by Commissioners Reedstrom (Chairman), Brenner, Rothschadl, and Sovell. Commissioner Steele abstained, having been absent the day of the hearing.