

STATE OF SOUTH DAKOTA



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CHIEF DEPUTY

April 17, 2025

Jolene Donovan
Bennett County Treasurer
202 Main Street
PO Box 606
Martin, SD 57551

Dave Bakley, Chair
Bennett County Board of Commissioners
202 Main Street
Martin, SD 57551

Re: In the Matter of Open Meeting Complaint 2021-02, Bennett County Board of
Commissioners – Bennett County

Dear Ms. Donovan & Mr. Bakley,

Enclosed please find proposed Findings of Fact and Conclusions of Law regarding the above referenced matter. You may submit objections to the proposed Findings and Conclusions, or you may propose alternate Findings and Conclusions, no later than the close of business on April 29th. Please submit any objections or proposed Findings or Conclusions to me via email (steven.blair@state.sd.us) or at the address indicated above. Any objections or proposed Findings or Conclusions will be considered at the time the Commission takes final action to adopt Findings and Conclusions in this matter.

The Commission will be holding a meeting on May 2, 2025, and will consider the findings and conclusions. A Notice of Hearing, and proposed agenda, regarding the May 2 meeting are also enclosed. As you can see from the agenda, consideration of the proposed findings and conclusions will begin at 2:00 p.m. mountain time or as soon thereafter as matters may be heard. You are not required to be present for consideration of proposed Findings and Conclusions.

April 17, 2025

Re: In the Matter of Open Meeting Complaint 2021-02, Bennett County Board of Commissioners – Bennett County

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If you have any questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "SRB", followed by a long horizontal flourish.

Steven R. Blair
Assistant Attorney General

SRB/jm
Enclosure

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN)	OMC 2021-02
MEETINGS COMPLAINT AGAINST)	
BENNETT COUNTY BOARD OF)	FINDINGS OF FACT,
COMMISSIONERS – BENNETT)	CONCLUSIONS OF LAW, &
COUNTY)	DECSISION

The above captioned matter was heard before the South Dakota Open Meetings Commission (Commission) on November 18, 2024. Complainant, Jolene Donovan, did not appear personally or through counsel. The Bennett County Board of Commissioners did not appear and did not appear through counsel. Prior to the hearing, the Commission reviewed the written submissions of the parties as well as any other exhibit, pleading or paper on file herein. Based solely upon the materials submitted, the Commission enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Commission takes official notice that Bennett County is a political subdivision of the State of South Dakota created by the Legislature and duly organized and operated according to applicable provisions of South Dakota Codified Law.

2. The Commission further takes notice that the Bennett County Board of Commissioners is a public body elected pursuant to applicable provisions of state law to govern Bennett County.

OMC 2021-02
Bennett County Board of Commissioners
Findings and Conclusions

3. The Bennett County Board of Commissioners met on July 7, 2021. The Board of Commissioners, during that meeting, met in executive session with the Bennett County Sheriff. The agenda for the meeting did not give notice that an executive session would be held.

4. After concluding the executive session, the Board of Commissioners took official action on a pay raise for a Sheriff's Office transport officer.

5. The minutes of the Board of Commissioners' July 7, 2021, meeting show that the Board of Commissioners entered executive session with the Sheriff and Chief Deputy to discuss a personnel matter. The minutes also show the Board of Commissioners, after exiting executive session, took official action to raise the transport officer's salary.

6. Audio provided as part of the complaint materials submitted in this matter also establishes the above actions by the Board of Commissioners.

7. Jolene Donovan, Bennett County Treasurer, submitted an open meetings complaint to the Bennett County State's Attorney concerning the executive session held on July 7, 2021. Ms. Donovan alleged that the Board of Commissioner's violated the open meetings laws by entering executive session without an executive session noted on that meeting's agenda, and by taking official action on an item not listed on the meeting's agenda.

8. On August 18, 2021, Bennett County State's Attorney Sarah Harris forwarded the complaint to the Commission pursuant to SDCL § 1-25-6.1(3).

9. In its written response to the complaint, the Board of Commissioners admitted that it took official action at its July 7, 2021, meeting on an item that was not included on that meeting's agenda by approving the increase in the transport officer's salary. The Board of Commissioners noted that the action was ratified by a vote of the Board of Commissioners at its July 21, 2021, meeting.

10. SDCL § 1-25-1.1 requires political subdivisions (as that term is defined by SDCL § 1-25-12(1)) to provide public notice of their official meetings by posting a proposed agenda at least twenty-four hours preceding the meeting.

11. Any Finding of Fact more appropriately labeled as a Conclusion of Law is hereby re-designated as such and incorporated below therein.

CONCLUSIONS OF LAW

1. The Bennett County Board of Commissioners, as the governing body of Bennett County, South Dakota, is a public body subject to the open meetings requirements of SDCL ch. 1-25. The Open Meeting Commission has jurisdiction over this matter pursuant to SDCL ch. 1-25.

2. SDCL § 1-25-1.1 requires each political subdivision to post a proposed agenda for any official meeting of the political subdivision.

OMC 2021-02
Bennett County Board of Commissioners
Findings and Conclusions

3. “[T]he function of an agenda is to inform the members of the public in some detail as to the matters to be discussed at the meeting of [a] public body.” Ann Taylor Schwing, *Open Meetings Laws* 3d, § 5.40 (2011). An agenda must be sufficient to generally advise the public of the time and place of an official meeting of a political subdivision and advise the public of the nature of the items to be addressed at the meeting.

4. By failing to include the executive session on its July 7, 2021, meeting agenda, the Board of Commissioners failed to afford the public the right to know what official business would be discussed or conducted at that meeting. This is a violation of the state’s open meetings laws.

5. Official action by a political subdivision must be preceded by proper public notice through inclusion of the item on the final agenda adopted by the political subdivision for a meeting. The Commission concludes that where an item is acted upon without having been included on the meeting’s agenda a violation of the state open meetings laws occurs. The Board of Commissioners violated the state’s open meetings laws when it took official action at its July 7, 2021 meeting on an item that was not included on the meeting’s agenda.

6. Any Conclusion of Law more appropriately labeled as a Finding of Fact is 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 Bennett County Board of Commissioners for violating the South Dakota Open Meetings Laws by entering into executive session without that executive session being noted on the agenda for the Board of Commissioners' July 7, 2021, meeting. And, also for the Board of Commissioners taking action official action on an item that was not included on the agenda for that meeting.

Decision entered by Commissioners **Sovell (Chair), A. Hoffman, K. Hoffman, Russell, & Smith.**

Dated this _____ day of _____.

SOUTH DAKOTA OPEN MEETINGS COMMISSION

Emily Sovell, Chair

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN)	OMC 2015-03
MEETINGS COMPLAINT AGAINST)	
BENNETT COUNTY BOARD OF)	NOTICE OF HEARING
COMMISSIONERS – BENNETT)	
COUNTY)	

TO: Jolene Donovan, Bennett County Treasurer, 202 Main Street, PO Box 606, Martin, South Dakota 57551; and Dave Bakley, Chair, Bennett County Board of Commissioners, 202 Main Street, Martin, South Dakota 57551:

Please take notice that the final action to adopt the Findings of Fact, Conclusions of Law and Decision regarding the above referenced open meetings complaint will be held before the South Dakota Open Meetings Commission, at The Lodge at Deadwood, Cody Room, 100 Pine Crest Drive, Deadwood, South Dakota, on Friday, May 2, 2025. You are not required to be present, however, if you would like to be present the hearing will commence at 2:00 P.M. mountain time and proceed in the order noted in the attached agenda.

Dated this 17th day of April 2025.



Steven R. Blair
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN)	OMC 2021-02
MEETINGS COMPLAINT AGAINST)	
BENNETT COUNTY BOARD OF)	CERTIFICATE OF SERVICE
COMMISSIONERS – BENNETT)	
COUNTY		

The undersigned hereby certifies that a true and correct copy of the proposed Findings of Fact, Conclusions of Law, & Decision and Notice of Hearing in the above-captioned matter, were served by United States mail, first class, postage prepaid upon Jolene Donovan, Bennett County Treasurer, 202 Main Street, PO Box 606, Martin, South Dakota 57551; and Dave Bakley, Chair, Bennett County Board of Commissioners, 202 Main Street, Martin, South Dakota 57551, on this 17th day of April 2025.



Steven R. Blair
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215

SOUTH DAKOTA OPEN MEETINGS COMMISSION

AGENDA

THE LODGE AT DEADWOOD
CODY ROOM
100 PINE CREST DR.
DEADWOOD, SOUTH DAKOTA

May 2, 2025
2:00 p.m. Mountain Time

1. Approval of the Agenda
2. Public Comment period as per SDCL 1-25-1
3. Approval of the Minutes of February 24, 2025, meetings
4. Consideration of Findings of Fact and Conclusions of Law
 - A. In the Matter of Open Meeting Complaint 2021-02 Bennett County Board of Commissioners
 - B. In the Matter of Open Meeting Complaint 2024-01 Martin City Council
 - C. In the Matter of Open Meeting Complaint 2024-02 Bennett County Board of County Commissioners
 - D. In the Matter of Open Meeting Complaint 2024-03 Piedmont Board of Trustees
 - E. In the Matter of Open Meeting Complaint 2024-04 Lincoln County Commission
 - F. In the Matter of Open Meeting Complaint 2024-05 North Sioux City City Council
 - G. In the Matter of Open Meeting Complaint 2024-06 Carlyle Township
 - H. In the Matter of Open Meeting Complaint 2024-07 Pennington County Board of Commissioners
 - I. In the Matter of Open Meeting Complaint 2024-08 Sturgis City Council
 - J. In the Matter of Open Meeting Complaint 2024-09 City of Lead Commission
 - K. In the Matter of Open Meeting Complaint 2024-10 Green Valley Sanitary District
 - L. In the Matter of Open Meeting Complaint 2024-11 Charles Mix County Commission

M. In the Matter of Open Meeting Complaint 2024-12 Tripp City Council

5. Discussion regarding 2026 Legislative Session
6. Discussion regarding future meeting.

All items are scheduled for 2:00 p.m. Mountain Time. Scheduled items may be delayed or moved to a later agenda item at the discretion of the OMC.

Notice is given to individuals with disabilities that this meeting is being held in a physically accessible location. Please notify the Attorney General's Office, 605-773-3215, at least 48 hours before the meeting if you have a disability for which special arrangements must be made.