

STATE OF SOUTH DAKOTA



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April 17, 2025

Robert Fogg, Jr.
PO Box 794
Martin, SD 57551

Sarah Frankenstein
Gunderson, Palmer, Nelson, Ashmore, LLP
PO Box 8045
Rapid City, SD 57709

Re: In the Matter of Open Meeting Complaint 2024-01, Martin City Council –
Bennett County

Dear Mr. Fogg & Ms. Frankenstein,

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 2024-01, Martin City Council – 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 2024-01
MEETINGS COMPLAINT AGAINST)	
MARTIN CITY COUNCIL –)	FINDINGS OF FACT,
BENNETT COUNTY)	CONCLUSIONS OF LAW, &
)	DECSISION

The above captioned matter was heard before the South Dakota Open Meetings Commission (Commission) on November 18, 2024. Complainant, Robert Fogg, appeared personally. The Martin City Council appeared through counsel, Sarah Frankenstein. 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 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 City of Martin is a Second-Class municipality located in Bennett County, South Dakota, and has been organized and operated according to applicable provisions of South Dakota Codified Law.

2. The Commission further takes notice that the Martin City Council is the public body elected pursuant to applicable provisions of state law to govern the City of Martin.

OMC 2024-01
Martin City Council
Findings and Conclusions

3. The Martin City Council held an official meeting on February 8, 2023. During this meeting the City Council discussed the potential combination of the City police department with the Bennett County Sheriff's Office through the City contracting with the County for law enforcement. The City Council also entered into a discussion concerning the Cozad property.

4. The Cozad property consists of real property bequeathed by Fred Cozad to both the City of Martin and Bennett County.

5. The agenda posted for this meeting noticed "Law" as a general agenda item. The agenda did not specifically include notice of a discussion concerning combining City and County law enforcement. The agenda also did not include notice of a discussion concerning the Cozad property.

6. Robert Fogg submitted an open meetings complaint to the Bennett County State's Attorney on March 12, 2023. Mr. Fogg's Complaint alleged the City Council violated the state open meetings laws at its February 8, 2023, meeting by discussing the combination of the City police department with the Sheriff's Office, and by discussing the Cozad property, because neither item was specifically enumerated on the agenda for that meeting.

7. On May 9, 2023, Bennett County State's Attorney Sarah Harris forwarded the complaint to the Commission pursuant to SDCL § 1-25-6(3).

8. In its written response to the complaint, the City of Martin stated that it uses "Law" as a broad agenda item to denote discussions concerning issues with the Martin City Police Department. The City recognized the

requirements of SDCL 1-25-1.1 to provide notice of an official meeting by posting a proposed agenda. But the City asserted the statute does not establish the level of specificity that must be included on the agenda for each agenda item.

9. Before the Commission the City further explained that the City has historically used “Law” on its agendas to denote discussions concerning “law enforcement.” Similarly, the City uses agenda items such as “Golf” to discuss the municipal golf course, or “Liquor” to discuss municipal liquor licenses.

10. The City also informed the Commission that the possibility of the City contracting with the County for law enforcement was discussed at several meetings prior to February 8, 2023. The City highlighted that no final action concerning this item was taken at the February 8 meeting.

11. Concerning the discussion of the Cozad property, the City admitted that the topic was not a predetermined agenda item for the February 8, 2023, meeting. The discussion was raised by a member of the public during the meeting, and the City permitted the citizen to be heard. Conversation regarding the Cozad property followed based on the citizen’s comments. No final action was taken by the City at the February 8 meeting regarding the Cozad property

12. The City asserted before the Commission that allowing the discussion of the Cozad property to occur was good governance in that it encourages citizens to question their public bodies about items of concern.

13. 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.

14. 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 Martin City Council, as the governing body of the City of Martin, 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. “[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.

3. No provision of SDCL ch. 1-25 defines the level of specificity that must be used by a public body to identify agenda items on a proposed agenda. The Commission has previously concluded that the agenda “must include a bare identification of the matters to be discussed by the public body.” In re Yankton County Commission, OMC # 2020-03.

4. The Commission concludes that the City of Martin did not violate the open meetings laws by using “Law” as an agenda item for the City’s February 8, 2023 meeting and then engaging in a discussion of contracting with the County for law enforcement services. The “Law” agenda item was a bare identification of the matters to be discussed by the City at that meeting.

5. The Commission is cognizant, however, that the goal of the open meetings laws is to foster the public’s access to the greatest possible amount of information about the affairs of public bodies as can be provided. While not required by statute, best practice concerning the level of detail to include on an agenda would be to include sufficient information to put the public on notice of the specific items planned to be discussed at a particular meeting.

6. The Commission further concludes that the City of Martin did not violate the state open meetings laws by engaging in a discussion concerning the Cozad property at its February 8, 2023 meeting.

7. A public body can only be held responsible for ensuring its agenda for a particular meeting includes those items the public body intends to discuss or those items upon which it intends to take official action. Here, the Cozad property discussion was raised by a citizen, and principles of good governance lead to the conclusion that some discussion of the issue in that instance is allowable. To require the City to shut down the discussion until it could be placed on an agenda for a future meeting would only work to stifle public engagement with the City.

8. Concerning the Cozad property, the Commission also notes that no final action was taken regarding the property at the February 8 meeting. Had final action been taken by the City at that time, without the item appearing on the meeting agenda, a violation of the open meetings laws would have occurred. 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.

9. 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 determines the City of Martin did not violate the South Dakota open meetings laws in regard to the facts and allegations raised by the complaint filed in this matter.

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

Dated this _____ day of May 2025.

SOUTH DAKOTA OPEN MEETINGS COMMISSION

Emily Sovell, Chair

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN)	OMC 2024-01
MEETINGS COMPLAINT AGAINST)	
MARTIN CITY COUNCIL –)	NOTICE OF HEARING
BENNETT COUNTY)	

TO: Robert Fogg, Jr., PO Box 794, Martin, South Dakota 57551; and Martin City Council attorney Sarah Frankenstein, Gunderson, Palmer, Nelson, Ashmore, LLP, PO Box 8045, Rapid City, South Dakota 57709:

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 2024-01
MEETINGS COMPLAINT AGAINST)	
MARTIN CITY COUNCIL –)	CERTIFICATE OF SERVICE
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 Robert Fogg, Jr., PO Box 794, Martin, South Dakota 57551; and Martin City Council attorney Sarah Frankenstein, Gunderson, Palmer, Nelson, Ashmore, LLP, PO Box 8045, Rapid City, South Dakota 57709, 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.