

STATE OF SOUTH DAKOTA



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April 17, 2025

Robert Fogg, Jr.  
PO Box 794  
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 2024-02, Bennett County Board of  
County Commissioners – Bennett County

Dear Mr. Fogg & 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 29<sup>th</sup>. Please submit any objections or proposed Findings or Conclusions to me via email ([steven.blair@state.sd.us](mailto: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 2024-02, Bennett County Board of County  
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

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IN THE MATTER OF OPEN	)	OMC 2024-02
MEETINGS COMPLAINT AGAINST	)	
BENNETT COUNTY BOARD OF	)	FINDINGS OF FACT,
COMMISSIONERS – BENNETT	)	CONCLUSIONS OF LAW, &
COUNTY	)	DECSISION

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The above captioned matter was heard before the South Dakota Open Meetings Commission (Commission) on November 18, 2024. Complainant, Robert Fogg, appeared personally. 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 2024-02  
Bennett County Board of Commissioners  
Findings and Conclusions

3. The Bennett County Board of Commissioners met on February 1, 2023. During that meeting, a Commissioner requested to enter executive session for “contractual” reasons. The initial minutes for the meeting indicate there was no second to the motion to enter executive session and no vote taken to enter executive session. The Board of Commissioners met in executive session for approximately fifty minutes.

4. At its March 1, 2023, meeting the Board of Commissioners amended the minutes of the February 1, 2023, meeting were to indicate that no second was made to the motion to enter executive session, but that all Commissioners present voted to enter executive session.

5. Robert Fogg submitted an open meetings complaint to the Bennett County State’s Attorney on February 28, 2023. Mr. Fogg alleged that the Board of Commissioner’s violated the open meetings laws by entering executive session without a proper motion, second, and vote of the Commissioners.

6. On May 9, 2023, Bennett County State’s Attorney Sarah Harris forwarded the complaint to the Commission pursuant to SDCL § 1-25-6.1(3).

7. The Board of Commissioners did not respond to this complaint.

8. Regarding the procedure necessary to enter executive session, SDCL 1-25-2 states than an executive session of a public body may only be held “upon a majority vote of the members of such body present and voting...”

9. 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 1-25-2 only authorizes public bodies to enter executive session for the specific purposes stated in the statute and for any other issue defined as privileged or confidential under state or federal law. As noted above, the statute requires a vote of the public body to enter executive session.

3. The Commission concludes that implied within the authority to enter into executive session is the requirement that the public body appropriately enter executive session by entertaining a motion to enter executive session for a clearly stated authorized purpose, obtaining a second to that motion, followed by a vote of the members of the body.

4. By failing to obtain a second to the motion to enter executive session at its February 1, 2023, meeting, the Board of Commissioners violated the state's open meetings laws.

5. 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 obtaining a second to the motion to enter executive session at its February 1, 2023 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

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IN THE MATTER OF OPEN	)	OMC 2024-02
MEETINGS COMPLAINT AGAINST	)	
BENNETT COUNTY BOARD OF	)	NOTICE OF HEARING
COMMISSIONERS – BENNETT	)	
COUNTY	)	

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TO: Robert Fogg, Jr., PO Box 794, Martin, South Dakota 57551; and Dave Bakley, Chair, Bennett County Board of Commissioners, 202 Main Street, 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.



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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

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IN THE MATTER OF OPEN	)	OMC 2024-02
MEETINGS COMPLAINT AGAINST	)	
BENNETT COUNTY BOARD OF	)	CERTIFICATE OF SERVICE
COMMISSIONERS – BENNETT	)	
COUNTY	)	

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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 Dave Bakley, Chair, Bennett County Board of Commissioners, 202 Main Street, South Dakota 57551, on this 17th day of April, 2025.



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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.**