

SOUTH DAKOTA

OPEN MEETINGS COMMISSION

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IN THE MATTER OF OPEN MEETING
COMPLAINT 2024-11 CHARLES MIX
COUNTY COMMISSIONERS

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MONDAY, NOVEMBER 25, 2024
MATTHEWS TRAINING CENTER
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA 57501

COMMISSION MEMBERS PRESENT:

EMILY SOVELL, CHAIR
KATELYNN HOFFMAN
LANCE RUSSELL (by Teams)
MICHAEL SMITH
AUSTIN HOFFMAN

APPEARANCES:

As Counsel to the Commission: STEVEN R. BLAIR
Attorney General's Office
PO Box 70
Rapid City, SD 57702

1 MONDAY, NOVEMBER 25, 2024

2 CHAIRWOMAN SOVELL: We will go into complaint number
3 2024-11, Charles Mix County Commission. The complainants are
4 Jeff and Jolene Stewart, and they are present, okay. Just as
5 with the others, you will be provided a 15-minute time slot to
6 present your complaint. You can reserve a portion of that time
7 for rebuttal, if you so choose, and Mr. Blair will track the
8 time. And we will let you go ahead and proceed when you are
9 ready.

10 MS. STEWART: Good afternoon. We appreciate the
11 opportunity to voice our concern and the probable impact that
12 failure to post the May 23rd county commission agenda on the
13 Charles Mix County Courthouse had. So on the north door of the
14 courthouse, there was a notice about tabulator machine testing
15 and the agenda for the May 9th meeting. And on the south
16 courthouse door, there was only the notice about the testing
17 for the tabulator. We do have copies of some items we are
18 going to reference, the ad in the paper, the agenda for the May
19 23rd meeting, and photos of the courthouse doors. Jeff is
20 going to provide some background information to substantiate
21 the reasons the May 23rd meeting was important to the citizens
22 of Charles Mix County.

23 MR. STEWART: Thank you, Commissioners. On March 3rd
24 I called the Charles Mix County Auditor's Office and talked to
25 Auditor Jason Gant. I asked him if I could be put on the

1 county commissioners agenda for the March 14th meeting. I
2 explained the subject was election integrity, specifically hand
3 counting election ballots in the precincts. He immediately
4 answered that will never happen in my county and then said no
5 for me being on the agenda. I repeatedly asked two of our
6 three commissioners or the auditor to be on the agenda to
7 address election integrity for the next couple of months. I
8 was not allowed to be on the agenda.

9 Shortly after the March 14th meeting, about a dozen
10 Charles Mix County citizens started to circulate a hand count
11 initiative petition. When the petition was turned in on April
12 22nd, 11 percent of the Charles Mix County voters had signed
13 the petition, and what I'm referring to is 11 percent of the
14 Charles Mix County voters who voted in the 2022 election.

15 Then on May 8th, the day after -- the day before the
16 commission meeting, I noticed that county initiative petition
17 was on the agenda for the May 9th meeting. I attended the May
18 9th county commission meeting with 12 other citizens from
19 Charles Mix County. Under that agenda item, we listened to a
20 34-minute anti hand count paid slide presentation. After this
21 the commissioners rejected the hand count petition.

22 Near the end of this meeting, all 12 citizens asked
23 the commissioners to put hand counting on the next meeting
24 agenda on May 23rd. The hope was that this on the agenda --
25 this would be put on the agenda and the commissioners could

1 still vote for or against changing the county election system
2 from machine counting to hand counting. The attendees'
3 understanding was the commissioners agreed to put elections on
4 the agenda for the May 23rd meeting.

5 With this in mind, in mid May we put an ad in the
6 Wagner and Platte papers asking people to come to the county
7 commission meeting on May 23rd because there would be a
8 discussion of our election system. Upon arrival for the May
9 23rd county commission meeting, we noticed the agenda was not
10 on either door to the courthouse. We informed one of the
11 commissioners that was going into the courthouse that there was
12 no agenda posted on the door.

13 There well may have been some people who came and
14 thought the meeting was cancelled and went home. At least 18
15 people attended the meeting in support of the commissioners
16 voting to rid the county of the machines and change our
17 election to a hand count system. The commissioners did not put
18 elections or hand counting on the agenda and did not take a
19 vote.

20 Rejecting the petition and not listening to the will
21 of the people does not comply with the Amendment 1 of our
22 federal constitution, the right to petition the government. It
23 also does not comply with South Dakota Codified Law 7-18A-13,
24 which says petitions with five percent or more signatures of
25 the voters shall be submitted to a vote of the voters. Nor

1 does their actions uphold the South Dakota motto of under God
2 the people rule. We are concerned our auditor and/or our
3 commissioners left the meeting agenda off the courthouse doors
4 on May 23rd in an effort to dissuade meeting attendance.

5 MS. STEWART: In summary, I overheard the
6 conversations because Jeff had his phone on speaker; so I heard
7 the initial comments from the auditor and his subsequent
8 request to get on the agenda. And we feel we did our part. We
9 notified the state's attorney, we let the commissioner know
10 that the agenda wasn't on the door, and that has resulted in
11 our presence here today. This was an important meeting on May
12 23rd, and there needs to be consequences for the county's
13 failure to post the meeting agenda on the courthouse doors.
14 Citizens have the right to be informed. Thank you both. We
15 will stand by for questions.

16 CHAIRWOMAN SOVELL: How are they for rebuttal time?

17 MR. BLAIR: Eight minutes.

18 CHAIRWOMAN SOVELL: You will have plenty of time for
19 rebuttal. We received indication that there would not be any
20 oral presentation on behalf of the county, but if that has
21 changed.

22 MR. BLAIR: This is Steve Blair. I would note for the
23 record that State's Attorney Steve Cotton is available in the
24 room if the commissioners have any questions, but he's not here
25 directly representing the commission. He's here as the

1 referring state's attorney.

2 CHAIRWOMAN SOVELL: Does anybody have any questions
3 for the state's attorney? If none, we can refer back to see if
4 there is any further rebuttal, not that there would be any to
5 the oral presentation, but there certainly is time for further
6 discussion with the complainants if we need to. Is there
7 anything you wanted to add with respect to your oral
8 presentation?

9 MS. STEWART: I don't believe so.

10 MR. STEWART: I don't believe so, ma'am. Thank you.

11 CHAIRWOMAN SOVELL: With that we will close the oral
12 presentation and we will go into the deliberation. Casting
13 aside the fact that again, anything with elections is always a
14 topic that people have very strong emotions it seems, but I'm
15 casting that aside and focusing strictly on the facts there was
16 improper posting of an agenda. And I don't think there is any
17 real significant question in this case. Anybody else have
18 other thoughts? You want to add anything to that discussion?

19 MR. HOFFMAN: No, it's pretty simple. I think there
20 was an admission it was not posted, the statute says it needs
21 to be at least located at the principal office, it was not.

22 MR. SMITH: They could have cured that by postponing
23 that meeting. It appears also that that meeting did continue,
24 which I think is the second part of that analysis. So I think
25 there is a violation.

1 CHAIRWOMAN SOVELL: Somebody want to make that a
2 formal motion?

3 MR. SMITH: So moved.

4 CHAIRWOMAN SOVELL: We have a motion. Any further
5 discussion? Call for a second on that.

6 MS. HOFFMAN: I would second it.

7 CHAIRWOMAN SOVELL: We have a motion, we have a
8 second. All those in favor signify by saying "aye."

9 (Motion passed unanimously.)

10 CHAIRWOMAN SOVELL: Anyone opposed, same sign.
11 Hearing no votes, we have passed by unanimous vote and find in
12 favor of a violation in the Charles Mix County Commission case
13 2024-11. And once again, we will thank Mr. Blair in advance
14 for proposing the findings and conclusions for consideration at
15 the next meeting.

16 (Whereupon, the proceedings were concluded.)
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C E R T I F I C A T E

STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF HUGHES)

I, Carla A. Bachand, RMR, CRR, Freelance Court
Reporter for the State of South Dakota, residing in Pierre,
South Dakota, do hereby certify:

That I was duly authorized to and did report the
proceedings in the above-entitled cause;

I further certify that the foregoing pages of this
transcript represents a true and accurate transcription of my
stenotype notes.

Dated this 5th day of December 2024.

/s/ Carla A. Bachand
Carla A. Bachand, RMR, CRR
Notary Public
My commission expires: June 10, 2030