

OPEN MEETING COMMISSION
November 18, 2024
TRANSCRIPT

ES: Emily Sovell, Sully County
KH: Katelynn Hoffman, Turner County
AH: Austin Hoffman, McPherson County
LR: Lance Russell, Fall River/Oglala Lakota County
MS: Michael Smith, Clay County
SB: Steven Blair, Attorney General's Office

Bennett County Board of Commissioners (Pages 6-7 & 26-29):

Martin City Council (Pages 7-22):

RF: Robert Fogg, Jr., Complaint
SF: Sarah Frankenstein, counsel for Martin City Council

Bennett County Board of Commissioners (Pages 22-26):

RF: Robert Fogg, Jr., Complaint

Transcript starts when meeting starts

SB: Good morning. I'd like to welcome everybody to the Open Meeting's Commission meeting of November 18, 2024. Commission's physically present, a majority of the Commission is physically present in the Matthews Training Center in the Foss building in Pierre, South Dakota. My name is Steve Blair I'm a Deputy Attorney General, I'm counsel of the Commission, because there are no elected officers I'm doing the welcome this morning so we will elect officers here in a minute. I want to, as I said, thank everybody for being here. A few reminds if you're on – this meeting is being broadcasted on SD.net part of South Dakota Public Broadcasting so if you are um, running that stream in the background please mute that. Please also make sure to mute yourself on TEAMS or on your phone so we can avoid any of feedback on the meeting. Also, if you're in the meeting room the microphones that are hanging from the ceiling are fairly sensitive and will pick up side conversations so just friendly reminder about that.

I will do commissioner introductions then we'll call the roll. Members of the Commission are Katelynn Hoffman out of Turner County, Austin Hoffman who is appearing via Teams out of McPherson County, Lance Russell out of Fall River/Oglala Lakota County, Michael Smith out of

1 Clay County and Emily Sovell out of Sully County and with that I will call
2 the roll and we will establish a quorum. Katelynn?
3
4 KH: Present
5
6 SB: Austin?
7
8 AH: Present
9
10 SB: Lance?
11
12 LR: Here
13
14 SB: Michael?
15
16 MS: Here
17
18 SB: Emily?
19
20 ES: Here
21
22 SB: We have a quorum of the Commission. First item on the Agenda is the
23 approval of the agenda. I'd seek a motion from the Commissioners and
24 second to approve the agenda.
25
26 ES: Motion to approve.
27
28 SB: Motion by Sovell.
29
30 MS: Second.
31
32 SB: Second by Smith. All those in favor please say aye.
33
34 KH: Aye
35
36 ES: Aye
37
38 LR: Aye
39
40 MS: Aye
41
42 AH: Aye
43
44 SB: Any nays? Hearing none that motion passes. The second item on the
45 agenda is public comment period required per SDCL 1-25-1. Are there
46 any members of the public who are not participants in any of the

1 proceedings today that would like to make public comment? I'll note for
2 the record that there is nobody in the meeting room itself that appears to
3 want to make public comment and I hear none online so with that we
4 will move to the next item on the agenda which is the commissioner
5 introductions and I guess I will allow each of them to introduce
6 themselves where they come from anything else they want to share and
7 I'll maybe start on the end with Ms. Hoffman.
8

9 KH: My name's Kate Hoffman I live in Parker and I'm the Turner County
10 State's Attorney.
11

12 MS: My name's Michael Smith I'm the Clay County State's Attorney out of
13 Vermillion South Dakota.
14

15 LR: Lance Russell the Fall River and Oglala County State's Attorney and I live
16 in Hot Springs.
17

18 ES: Emily Sovell, Sully County State's Attorney I have offices in Onida and
19 (inaudible).
20

21 SB: Thank you for that. Also, assisting with the Commission is Jenna
22 McFarlane she's a paralegal in the Attorney General's Office. The next is
23 the election officers. I would recommend that the Commission elect a
24 chair and a vice-chair in the past we've not always elected a vice chair,
25 but in cases where there's a recusal of the chair in terms of proceedings
26 or signing findings vice-chair is often helpful and so I would leave it up to
27 the Commission you can elect a slate or you can each position
28 individually really however you wish to proceed.
29

30 ???: You're the only one that's been on here for (inaudible)
31

32 ES: So if I ask (inaudible) so
33

34 KH: I did serve on it, but I know that we had elected Emily so I would make
35 that a motion for chair.
36

37 MS: I'll second.
38

39 SB: So the
40

41 AH: What – what was that motion for I couldn't hear that?
42

43 SB: Oh I should remind you the Commissioners all have microphones in
44 front of them if you could turn push the button so the green light comes
45 on those mics should pick you up. If we could repeat the motion.
46

1 KH: I had a motion to make Emily the chair.
2
3 LR: I'll second that.
4
5 SB: Mr. Russell seconds. Ms. Sovell willing to accept that nomination.
6
7 ES: I will so long as there is a vice, my schedule has been (inaudible) I want
8 to assure someone else could step in if I am unable.
9
10 SB: With that we'll take the all those in favor of the motion.
11
12 KH: Aye
13
14 ES: Aye
15
16 LR: Aye
17
18 MS: Aye
19
20 AH: Aye
21
22 SB: Any nays? Hearing none Ms. Sovell is the Chair of the Open Meetings
23 Commission and will move to nominations for vice chair.
24
25 MS: I move to make Katelynn Hoffman vice-chair.
26
27 SB: Mr. Smith nominated Ms. Hoffman. Mr. Russell was that second?
28
29 LR: Yes
30
31 SB: Mr. Russell seconded. Ms. Hoffman are you willing to serve in that roll?
32
33 KH: Yes I can do that.
34
35 SB: Okay she is willing to serve with that we'll – any all ayes please.
36
37 KH: Aye
38
39 ES: Aye
40
41 LR: Aye
42
43 MS: Aye
44
45 AH: Aye
46

1 SB: Any nays? Hearing none Ms. Hoffman's elected vice chair and with that I
2 will turn the meeting over to chair Sovell.
3

4 ES: The next matter on the agenda is the discussion of our procedures. Our
5 procedures for brining the matter before this Board. The complaints
6 have come in from local state's attorney's office (inaudible) determination
7 of whether they come forward and so today we have a number of them
8 I'm not going to spend a significant amount of time on the procedures.
9 You will be giving the time periods as set forth on the agenda to each of
10 those who are scheduled today. Do you want me to do anything further?
11

12 SB: Well I had a few questions for the commission in terms of what you want
13 your procedures to be in just on a couple of items.
14

15 ES: Okay
16

17 SB: The first on it when you'd like complaints sent to you. Historically we
18 have waited until we've had two or three complaints package them
19 together schedule the meeting at that time sent them to the Commission
20 members. I want to make sure that was everybody's desire to proceed
21 that way. The other option would be we'd send them as we receive them.
22 By as we receive them I envision complaint we'd send it out for response,
23 we'd get the response and then we would send it to the Commission
24 members.
25

26 ES: I'm fine with waiting for a group of them unless we get out where we're
27 waiting for such an extended period of time that somebody is really
28 (inaudible)
29
30 (inaudible)
31

32 SB: And with that we'll carry through with what we've normally done. We will
33 wait until we have two or three complaints and at that time we'll look to
34 schedule a meeting and get those materials out to the Commission
35 member. The other question I had is when you want to schedule
36 meetings but I think that maybe answers that whether you want to just
37 schedule them quarterly we can cancel them if we don't have any
38 complaints or want to wait until there's two or three complaints pending
39 on scheduling that way. You have to meet at least once a year to elect
40 officers so that would always be there'd always be at least one meeting
41 scheduled.
42

43 ES: I think on a as needed basis so we can assure (inaudible) schedules.
44 There's some benefit to saying we have it there we know have that time
45 frame set aside in advance, but with it being unpredictable (inaudible)
46 that time for everybody to volunteer forth (inaudible)

1
2 SB: See a affirmation of that position so that's the way we will proceed.
3 Schedule meetings as needed and will wait until two or three complaints
4 come in so we can look at that scheduling and also sending materials to
5 the Commission members. I think that's all the questions I have for the
6 Commission proceedings.
7

8 ES: Okay. We will go right into number six which is the consideration of the
9 pending complaints. The first matter is number A **In the Matter of Open**
10 **Meeting Complaint 2021-02, Bennett County Board of**
11 **Commissioners** and we have I'll just go through and make sure
12 everybody received the materials for that. In the materials I received I
13 had the initial complaint materials, August 26, 2021, acknowledgment,
14 the May 3 letter to Jolene Donovan, May 8 email Jolene Donovan, May
15 24 letter, September 4 letter to Bennett County, September 8 Fax,
16 September 9 email, October 18 Letter to the parties Notice of Hearing,
17 the agenda and Certificate of Services. Did everybody (inaudible)
18

19 LR: Yes
20

21 KH: Yes
22

23 MS: Yes
24

25 AH: Yep
26

27 ES: Okay so we will (inaudible) we will open this up to the complainant
28 Jolene Donovan for fifteen minute portion of the time may be reserved in
29 the even that she wants to have rebuttal. Is anyone online or person?
30

31 SB: I did hear from her. I thinking she said she was going to make it.
32

33 ES: (inaudible) check the (inaudible) and make sure we haven't received any
34

35 SB: No I didn't receive an email from her.
36

37 ES: (inaudible) indicates that we are set for central time. She's trying to find
38 parking out front.
39

40 SB: (inaudible)
41

42 ES: (inaudible) thank you.
43

44 SB: I called both her work number and her cell number that she provided to
45 me and she did not answer either. I left voice mails asking her to call me
46 as soon as she received those.

1
2 ES: Okay so I was just asked the question of what we have done historically
3 when we have someone who has submitted their complaints and they
4 have not appeared to present their oral argument my initial reaction was
5 we proceed on what's written and let the other side respond accordingly,
6 but do you recall?
7
8 SB: I don't believe this has ever happened.
9
10 ES: Okay I feel better because I didn't think so either, but
11
12 SB: Yeah
13
14 ES: The only reason (inaudible)
15
16 SB: The statute talks about the Commission considering the complaints on
17 the written submissions. It actually doesn't – the language of the statute
18 itself doesn't include language for a hearing. It's always just been
19 historical preference of the Commission to allow the parties an
20 opportunity for oral arguments if you will and opportunity for the
21 Commissioners then to get their questions answered regarding what's
22 been alleged. So, the statute does allow consideration on just the written
23 submissions so I think what chair Sovell has indicated two options one
24 would be to move this later in the agenda in case Ms. Donovan calls in
25 the next several minutes or half hour or to proceed based on the written
26 submission and I don't know if anybody from the Bennett County
27 Commission is online to respond. Is there anybody from the –
28 representing the Bennett County Commission that wishes to respond to
29 Ms. Donovan's complaint this morning? I hear nobody so.
30
31 ES: Well and with there being no one from the other side where we don't have
32 specific times we have (inaudible) agenda I think maybe (inaudible) to
33 push this one to the end especially with (inaudible) and we'll just table
34 that one move to B and we have (inaudible). So we'll move forward into
35 letter B **In the Matter of the Open Meeting Complaint 2024-01**
36 **Martin City Council.** Let's switch gears here. I had received the initial
37 complaint materials, May 1 acknowledgement letters, June 28 2024
38 Martin City Council response, October 18, 2024 letter to the parties,
39 Notice of Hearing, proposed agenda and certificate of service in that
40 particular file. Has everyone on the Commission received those
41 materials?
42
43 KH: Yes
44
45 MS: Yes
46

1 LR: Yes
2
3 ES: Okay
4
5 AH: Yes
6
7 ES: Very good then we will open for our oral presentations the first is
8 complainant Robert Fogg, Jr. who is giving fifteen minute time segment a
9 portion of which may be reserved for his rebuttal. Is Mr. Fogg present in
10 person or virtually?
11
12 RF: I'm present (inaudible)
13
14 ES: You're present, but you're froze is that what you said?
15
16 RF: Yes I'm on teams.
17
18 ES: Okay so we can hear you Mr. Fogg and can you hear us okay?
19
20 RF: So far so good.
21
22 ES: Okay we're going to go ahead and start our time clock here we will give
23 you the opportunity to go ahead and proceed you have fifteen minutes to
24 give an oral presentation to us and you can reserve a portion of that for
25 rebuttal. You may proceed
26
27 RF: Are you now prepared to be
28
29 ES: Okay you may proceed.
30
31 RF: Thank you good morning Madam Chairman, Commission members, Mr.
32 Stewart my name is Robert Fogg, Jr. Martin South Dakota. I bring this
33 complaint a violation of open meeting law section 1-25-1.1 vs. the City of
34 Martin – Martin City Council. This complaint was submitted to you by
35 the Bennett County State's Attorney dated May 9, 2023. I would direct
36 your attention to her cover sheet, Ms. Harris's cover sheet the third
37 paragraph that gives a very clear synopsis of what went on at this
38 meeting. The third line of the third paragraph I'm going to go quote at the
39 start of the City Council meeting City Council member Rascher moved to
40 approve the agenda with flexibility. The agenda was then approved. The
41 agenda that was approved did not include the two additional agenda
42 items combining of City and County Law Departments or Cozad Property.
43 I'm going to stop the quote right there and refer back to state law which
44 clearly states each political subdivision shall provide public notice with
45 proposed agenda that is visible, readable and accessible for at least an
46 entire continuous 24 hours immediately proceeding the official meeting

1 by posting a copy of the notice visible to the public at the principal office
2 of the political subdivision holding the meeting. The proposed agenda
3 shall include the date, time, and location of the meeting. The agenda as
4 you can see in the file did not include reference to combining of law nor
5 the Cozad property which if I may Madam Chair are these two issues
6 being in consolidated into one?
7

8 ES: We have them, sir, on separate Agenda items so we will for clarification
9 in our minuetts and because they came in as separate complaints we will
10 keep them as two separate matters.
11

12 RF: Okay staying specific now to the failure to give notice of the City and
13 County combining law issue. I must point out first of all again it did not
14 appear on the agenda. There is a financial cost that the public needed to
15 have been clearly aware of at that time. At that time there were no clear
16 dollar amounts being tossed around. Please remember the Bennett
17 County Sheriff is already paid to preform law enforcement duties in
18 Bennett county. The City of Martin is in Bennett County. Without a
19 monthly payment of over \$28,000 the County Sheriff refuses to provide
20 law enforcement services in Bennett County. Nonetheless, this matter
21 appeared on the agenda. I cannot say with any certainty that this has
22 gone on and even today that there is a clear budget authority for this
23 City to be spending over \$28,000 a month to Bennett County for the
24 Bennett County Sheriff to provide a duty that he is already paid to
25 perform. It must also be pointed out that Mr. Stewart is typically not
26 present at these City Council meetings. When the topic of law appears on
27 a City Council agenda the general purposes of this agenda item is to
28 break law enforcement. For whatever reason this City and it's elected
29 people they seem to put the police department under a microscope in
30 open public they don't treat other department heads or departments with
31 the same disparaging commentary that they do here. For this I'd like to
32 reserve the remainder of my time, please.
33

34 ES: Okay Mr. Fogg you have 10 minutes for your rebuttal in this particular
35 file and so with that we will allow the Martin City Council to proceed.
36 They have 15 minutes.
37

38 (inaudible)
39

40 ES: If you'd like to that would be great.
41

42 SB: There's a button on that.
43

44 SF: Testing.
45

46 ES: If you could please state your appearance and then (inaudible) proceed.

1
2 SF: I am Sarah Frankenstein the City Attorney for the City of Martin and I
3 will be responding to both these complaints and I understand the first
4 one is with regard to Law or the combining of law departments as was
5 discussed in the February 8, 2023, meeting. Then later I understand we
6 will be discussing the Cozad property. Okay so I'll reserve my comments
7 on that. As you can see on the Agenda for the February 8, 2023, City of
8 Martin meeting you can see that the word Law is on there. That's always
9 historically been known to be short for Law Enforcement where our City
10 Chief of Police would provide the City Council with statistics for the last
11 month of various things. The City police department has been doing.
12 Arrest made etc. In addition to giving statistics under the Law agenda
13 item of law enforcement we would discuss hiring or firing whether we
14 need to hire more perhaps go into executive session to discuss
15 disciplinary issues or other employment matters. We would take
16 complaints, City Council members, the Mayor, Law Enforcement people
17 or even the public could discuss complaints that they have with Law
18 Enforcement. Often times schedules or coverage would be discussed did
19 we have anybody on duty late night on this particular date. The visibility
20 in the community all those types of things would be discussed under law
21 which we've all known in the Martin area is short of Law Enforcement.
22

23 You can see on the agenda to some other examples where kind of a
24 truncated shortened statement signifies something bigger for instance
25 you might see Golf. Well when the City of Martin puts Golf on the
26 agenda they mean the municipal golf course so then they might discuss
27 things that have to do with the municipal golf course under that item.
28 Same for liquor we don't just discuss the topic of liquor we discuss the
29 municipal liquor licenses or the municipal liquor agreements.
30

31 On this particular day, of February 8, 2023, it came mid discussion of an
32 ongoing discussion that members of the community, the Mayor, City
33 Council members and even County Commissioners who would attend
34 had with regard to how to improve law enforcement and is a good idea
35 potentially to have the City contract with the County to provide law
36 enforcement within the City and City code enforcement. That had been
37 discussed for some meetings prior to February 8 and I will update you
38 since we've provided our response statement and actually it was my
39 deputy here Jacob Stewart who provided you'll see his name on our
40 response statement, since then just the September effective October did
41 the City actually enter into a contract with the County. So since the
42 February 8, 2023 meeting at issue here another year and seven months
43 of discussions at meetings took place. I believe it's somewhere pushing
44 two years if not over two years that this issue was discussed in City
45 Council meetings and the public had plenty of opportunity to weigh in
46 and boy did they. We took public comment at most of those meetings and

1 Mr. Fogg is a very active and good member of the Community. He's at I
2 think every single City Council meeting and we did take his public
3 comment at any number of those meetings to present.
4

5 The issue with putting a shorten statement like Law on there Mr. Fogg's
6 complaint is that because he views combining or contracting with the
7 County to be a specific item within or under Law Enforcement and
8 because it merits it's own subcategory it should have. The question that
9 then is post to this committee is what does that do to the public ability or
10 the City Council or County Commissions ability to weigh in on issues.
11 The Open Meetings decisions that have been rendered thus far use terms
12 like subject matter. The subject matter must be on the agenda or the
13 issue or the nature of the issue, nature of the matter. Never has this
14 open meeting commission and certainly in statute does it indicate that
15 specific ideas to address an issue must be listed or else they can't be
16 discussed. Whenever you've got a subject on the agenda ideas will be
17 throwing out to address that. There will be members of the public who
18 will say what about this, how about we try this, the member of the
19 County Commissioner here at the City Council will say how much does
20 this cost, how does this work, what do other city's do. Every time I
21 member of the public or a member of the governing body throws out an
22 idea. The City attorney should not have to shut that down, or the Mayor
23 shut the discussion down, because that idea wasn't specifically listed on
24 the agenda. If this Commission does put forth some brightline rule and
25 decide that the issue is not reserved for the legislature this committee
26 should determine a brightline rule as to when is a subtopic specific
27 enough or important enough to merit it's own subcategory listed on the
28 agenda. What that would do in practice is when someone throws out a
29 different competing idea we would have to shut down that conversation
30 because that method of attacking the issue on the agenda was not on the
31 agenda I think that is contrary to the idea and the goal of good
32 governance.
33

34 We do want members of the public to be able to throw out ideas without
35 the City Council saying oh nope your idea's not on the agenda not going
36 to hear from you. Same with the members sitting on the governing body
37 itself I think that will only frustrate good governance and I don't think
38 that's the spirit behind the open meetings laws. I cited, or actually my
39 deputy cited, on page six of our submission the *Olson v. Cass*, that was a
40 Supreme Court decision it dealt with whether the Court should grant
41 injunctive relief because an open meetings law was not complied with.
42 The Supreme Court found that the open meeting law was substantially
43 complied with and found that the spirit of the law requires adequate
44 opportunity and notice to discuss the issue and public involvement in
45 the decision-making process. Certainly, here in Martin at the February

1 2023 meeting we had public involved and like I said we had another year
2 and seven month of public involvement in this particular matter.
3

4 Once again if you have questions or if its appropriate Mr. Fogg will tell
5 you that we did allow him to provide commentary on that in the next
6 year and seven months. We took a great deal of public commentary. The
7 County Commission also took that kind of public commentary in their
8 County Commission meetings when talking about contracting with the
9 City. So in the end the goal of allowing the public to be involved in the
10 decision-making process was met and we'll add those of you who serve in
11 small rural communities know that public meetings are a bit different
12 than they are before lets say the City of Sioux Falls or the City of Rapid
13 City. There are often times public comment is limited to three minutes
14 and people just come up say their peace for three minutes and then sit.
15 But in small town, small county, South Dakota we usually have a very
16 interactive governmental body. So an item might come on the agenda
17 and they'll say oh so and so is here isn't that your neighbor what are you
18 doing over there in that part of time. That's so common and we don't
19 want to shut that down because something they might say wasn't on the
20 agenda or that idea or information that they brought wasn't on the
21 agenda. I think that's contrary to the goal of good governance. I'll reserve
22 my comments about the Cozad property for later. Thank you.
23

24 ES: Sarah if I could call you back up and we'll fire some questions at you.
25

26 SF: Of course.
27

28 ES: Just for clarification of the record no formal action was taken on the Law
29 Enforcement issue at that particular meeting, correct?
30

31 SF: That's correct there was no kind of motion. There was a great deal of
32 discussion but no motions, nothing.
33

34 ES: And I see you have a public comment period on that agenda. This was all
35 discussed under Law or it was discussed in the public comment.
36

37 SF: It was discussed under Law I believe. Although the City of Martin like
38 many small towns don't just reserve all the public to speak during public
39 comment they invite commentary agenda by agenda. In fact people may
40 come and say my public comments going to be about the golf course and
41 they say oh lets wait until we get to that item on the agenda and then
42 that can be part of the greater discussion. So that's something I know to
43 be very common throughout the state and it certainly did happen here in
44 the City of Martin.
45

1 ES: Okay and I just want to be clear for our Commission here and for Mr.
2 Blair we had these on as one being the Bennett County Board of
3 Commissioner Complaint and then one being the Martin City Council oh
4 oops, I'm sorry I'm doing this (inaudible). Martin City Council first and
5 then the Bennett County Commission as a separate under C.

6
7 SB: I think the Bennett County Complaint is also filed by Mr. Fogg, but I
8 believe it's (inaudible)

9
10 ES: Okay so I am – I'm sorry so if you want to go ahead and proceed with
11 everything pertains to the presentation of argument 2024-01 and in that
12 complaint, we have (inaudible)

13
14 SF: Yes

15
16 ES: Do you want to go ahead and just address that at this time and we'll
17 make sure we give Mr. Fogg the opportunity to fully address that here as
18 well.

19
20 SF: I'd be happy to. So, the issue that Mr. Fogg brought forward is that the
21 Agenda in February 2023 didn't list Cozad Property. That's because the
22 City Council didn't intend to discuss it, but a member of the public
23 brought it up. So, again we're in a situation where we want open
24 government, we want people to be able to question their City Council or
25 County Commission about certain items and this a good example. We
26 had a member of the public say what's happening with the Cozad
27 property and just for background information the Cozad property is Fred
28 Cozad if you remember he was the long time attorney down in the Martin
29 area and he gifted he bequeathed property of his to both the City and the
30 County so there was often discussions what are the two governments
31 going to do to utilize or sell this property that Fred Cozad left.

32
33 So, a member of the public brought up the question and that of course
34 led to a discussion of about what is happening with the Fred Cozad
35 property. I think the City of Tripp decision that this body rendered some
36 time ago let me find the date for you, I don't have the date on the
37 decision, but I've got the copy of the decision if you'd like it. The City of
38 Tripp decision dealt with this very type of thing. In that case a resident of
39 Tripp was allowed to speak and ask some questions at a March 6, 2006
40 meeting so this is a older decision and this body had held obviously the
41 monthly city meeting is an open meeting and can be attended by anyone
42 to expect an interested citizen of a community to remain silent because
43 she was not on the agenda is certainly not the intention of an open
44 meeting. The City Council heard the concerns and comments of the
45 taxpayer but took no action therefore this is not a violation of the law.
46 That's basically the same thing that happened repeated here now in the

1 City of Martin in February 2023 we had a member of the public ask a
2 question, City Council explained there was some decision and then no
3 action was taken. So, I don't believe this could possibly be a violation of
4 open meeting laws under the city of Tripp decision and to reverse course
5 and find that it is would really shut down open commentary and open
6 government for small governmental bodies throughout the state.

7
8 ES: (inaudible) questions for her?

9
10 LR: I have one. Has the City of Martin changed their agenda item? Have they
11 made it more specific subsequent to this meeting and the complaint?

12
13 SF: That's a good question I can't recall if we began to put contract or
14 combine with the county more specifically there after do you recall
15 Jacob?

16
17 JS: I don't remember.

18
19 SF: I don't

20
21 LR: Maybe Mr. Fogg can answer.

22
23 SF: Yeah

24
25 LR: My mic. I'm having difficulties if somebody else could maybe ask that
26 question to Mr. Fogg, oh okay.

27
28 RF: My apologies I was muted out and Ms. Frankenstein I was not aware that
29 she was there good morning Sarah.

30
31 SF: Good morning Bob.

32
33 ES: And we'll come back

34
35 RF: Will someone repeat the question.

36
37 ES: Mr. Fogg we'll come back to you we'll have some questions for you during
38 your rebuttal period and we'll be right back with you we're going to let
39 her and conclude her question period.

40
41 LR: My other question is if we are to have an opinion that says that Law in a
42 general sense is sufficient what is in your mind the precedential value of
43 that going forward and interpretation of the statute?

44
45 SF: Well I do think this body should look at the historical nature of the words
46 use in that political area for instance in some other town or county of

1 South Dakota Law might not always mean law enforcement or the city
2 police department everybody in Martin knows that when you put law the
3 first person you talk to is the Chief of Police and then you go on to
4 discuss everything there is to discuss about the City Law Enforcement so
5 I do think the body should look at the facts peculiar to that particular
6 body if there's any members of the public who are in fact confused by a
7 truncated or shortened subject item, but then if everything if for
8 instances let's take the City Police Department if discussing hiring,
9 proper coverage, who was working during the break in, how come nobody
10 was working, do we need to hire more, how come we loss so and so, are
11 our wages sufficient to get more people, all the subjects that are sparked
12 from those questions to have to shut them down because each of those
13 issues aren't individually indicated on an agenda is not helpful to good
14 governance so the legislature didn't give a bright line indication as to how
15 specific you have to be on the agenda. This body in the past has said the
16 subject matter or the nature you know those types of words are pretty
17 broad and so that does allow ideas to be floated and good discussion of
18 the various options to be considered at City Council and County
19 Commission meetings. Does that answer your question?
20

21 LR: The issue that I have is Law when I first looked at the complaint not
22 having reviewed your submission which was of course very good. The
23 issue is in my mind if you have one word law on every agenda and then
24 you're going to speak specifically about a number of different topics. Law
25 could, you know, from my perspective if not living in Bennett County Law
26 in a general sense could I mean a myriad of topics it doesn't even say
27 Law Enforcement and that's my question here is – is there any in your
28 mind a definition or should there be any brightline as to what is required
29 for some kind of specificity so that the public actually has meaningful
30 notice of what's on the agenda?
31

32 SF: I would say in addition to looking at the traditional or historic use of the
33 word that if you were to create a brightline it should only be if action was
34 taken at that meeting. So, in this situation that's not what we have
35 before us we have probably two years maybe more of decision at meeting
36 after meeting of the concept of what to do to provide better law
37 enforcement including should we contract with the county. So, because
38 Mr. Fogg and other members of the community had meeting after
39 meeting after meeting of opportunity and they took it to voice their
40 concerns let me tell you they sure did and some are still opposed to the
41 decision to this day, but that's okay that's what open government is all
42 about getting to voice opposition or being a proponent of various ideas.
43 So, if you were to create a brightline I would say it should only be in the
44 context of when a decision is made then and there because then our
45 argument could be made I as a member of public would have shown if
46 only I knew that vague description on the agenda was going to include

1 this issue. Well, here we don't have that situation the meeting minutes
2 were published in paper after paper for years. The whole community
3 understood that this was a discussion and Mr. Fogg certainly did to.
4

5 KH: Is it fair to say when you did – when the City Council did take action and
6 approve the contract between the City and County that there was more
7 specific verbiage then law.
8

9 SF: I don't recall that, but I would tell you it's been in the meeting minutes
10 that are published in the Bennett County Booster. I don't recall if
11 specifically on the agenda we said potentially combined with County, but
12 I'll tell you sometimes it's just work better with the sheriff to provide
13 better coverage and coordinate your schedules sometimes that's the idea
14 and do we put that on the agenda every time no, but that's what's
15 discussed so when somebody says I'm for combining or contracting and
16 others say can't we just coordinate schedules better. Do we have to put
17 that on the agenda too? Or what if somebody says the only reason we
18 have this problem is we don't pay enough. Do we have to put discussion
19 of potential increased pay rates? You know just think of how could you
20 set a brightline rule without quashing and shutting down decision on all
21 the other good ideas that there are thrown out.
22

23 KH: I think maybe I'm trying to draw a line between the discussion items
24 which are more general which I think perhaps would be covered under
25 the law and then items that you know that action is going to be taken.
26 So, would someone responsibly know, and you know this isn't the item
27 for discussion now that I'm saying. When the County and City did decide
28 to contract was that more specific than decisions that took place under
29 law.
30

31 SF: I don't recall what was on our agenda for those and I don't have those
32 agendas with us. They took place since our submissions, but I will tell
33 you it was very well known in the community, and I think Mr. Fogg will
34 tell you he certainly knew that we discuss specific terms of the contract
35 for months. It was already decided should both bodies be able to come to
36 an agreement as to specific detailed provisions within the contract itself
37 and then it finally did just pass and become, I think it probably passed
38 at the September meeting to become effective this October just last
39 month.
40

41 LR: So there was no written contract at that time?
42

43 SF: No
44

45 LR: Under consideration.
46

1 SF: Correct. This was a conceptual the county was throwing this out as an
2 option and you'll see in Mr. Fogg's materials that he said a number of the
3 County Commissioners came and they were trying to present this as an
4 option so we were just in the beginning stages of how do we better
5 provide law enforcement in the community and that was an idea really
6 being proposed by the County.

7
8 MS: I have one question as well. A this February 8 meeting was this the first
9 time that this was discussed? This potential joinder and if not at
10 previous meetings do you recall if it was articulated similarly under law?
11 For just discussion purposes.

12
13 SF: I am fairly certain it was certainly discussed before the February meeting
14 and probably always just under law quote unquote. I think they had
15 tossed this around for quite some time and then I think this was the first
16 meeting if I recall correctly where the county showed up and really said
17 we're proponents please consider this idea. In fact our law committee had
18 shot down the idea for quite sometime before that and said we can't
19 recommend it we – we don't recommend it. Um, so there was a long
20 history of discussion about this in Martin.

21
22 MS: And just one follow up on that do you recall if there had ever been any –
23 any discussion or rather any vote cast in that regard prior to this
24 February 8 meeting or is everything before that also discussion in
25 nature?

26
27 SF: I'm not sure if there was a vote. There was much discussion when the
28 law board would come and was always against it and presenting to the
29 larger City Council body why, but I don't recall a vote. I – there sure
30 could have been. This went on and on for probably two years worth so I
31 don't remember what happened at each meeting it was a long history.

32
33 ES: Do you personally go to all the Martin City Council meetings?

34
35 SF: I probably go to 50% and then I zoom in on the remainder. It's two and
36 half hours from Rapid one way.

37
38 ES: I was thinking about that actually. That might not have been a relevant
39 question but I asked it anyway. Any other questions? Okay. Thank you.

40
41 SB: (inaudible) Mr. Fogg on the Cozad issue.

42
43 ES: Yes I will give him. He still has ten minutes so we'll um, Mr. Fogg we're
44 just discussing the timing here I'm going to give you the opportunity to
45 both address the Cozad issue and then any rebuttal we'll allow a little
46 more back and forth than usual just because I think I lacked clarity in

1 saying we were only addressing the one. So, if you want to go ahead and
2 proceed you can do your entire response and address the Cozad issue or
3 you can separate them out and let me know how you want to handle
4 that.

5
6 RF: If I may attempt to add a (inaudible) to some of the language Ms.
7 Frankenstein had shared this morning. I'm going to suggest that there
8 have been times that the topic combined law or combined law
9 enforcement did appear on an agenda. There should be approximately
10 one years worth of City of Martin agendas still online via their website. I
11 must point out and remind all of us here present that this issue is
12 confined to February 8 of 23 over a year and half ago. What has gone on
13 since has gone on since it has no barren on the prior events. Allow me to
14 also suggest and perhaps Ms. Frankenstein might care to chime in also.
15 There are times when salary of law enforcement may come into play.
16 There maybe times when there is a hiring or discipline etc. but it's not
17 uncommon on a city agenda where you might look at this one and see
18 the one that says law. Beneath it tapped in you might say executive
19 session with a cite to an appropriate reasoning that the legislature has
20 authorized us to use. The brightline is really clear. It's SDCL 1-25-1.1. It
21 tells us what we can and we cannot do. If we wish to talk about storm
22 damage we have public comment typically towards the top of the agenda.
23 If we have other concerns, typically towards the close of the meeting
24 there is opportunity to complain. That way one says I'm complaining
25 (inaudible) regarding a past meeting with now to agenda items that have
26 come clear that did not receive the appropriate attention on the agenda
27 that I'm going to say statute requires they be given and to that I will
28 conclude. Thank you.

29
30 ES: And Mr. Fogg.

31
32 AH: Just to follow – to follow up in regard to the past agendas I did go on to
33 the City of Martin's website and look the only one that is currently on
34 there is the agenda for their next meeting. I was not able to find any
35 agendas between the date of this complaint and today.

36
37 ES: Thank you. Mr. Fogg did you – do you feel as though you had the
38 opportunity to address both of your issues in your response and are you
39 prepared for questions or is there more that you would like to add by oral
40 presentation?

41
42 RF: If you have any questions, I'll be happy to take those.

43
44 ES: Okay so Mr. Fogg, I've worked with a number of council and
45 commissions through the years, and we do so very often. Especially in
46 the less populated areas we have the public commentary coming in and

1 address things that are not specifically listed on the agenda. If we – if we
2 home in and say everything that's opened up for public discussion must
3 be specifically listed, what do you think's going to happen to those – the
4 public interplay that these council and commission meetings. Are we
5 shutting them down are we shutting the public down?
6

7 RF: I appreciate your questions because it goes to the clarity necessary of a
8 documented timely published agenda. Again, City of Martin I can't speak
9 to your jurisdictions. In the City of Martin typically near the top of the
10 meeting there was an opportunity for the public to comment. Then again
11 it was the conclusion of the agenda and the subsequent meeting there is
12 a topic for people to complain if they have a complaint to present. I will
13 add and I think that Ms. Frankenstein and is likely to also agree that the
14 current Mayor, Mayor Rayhill is very considerate with respect to allowing
15 the public to speak to topics as the agenda proceeds. That not common
16 in these parts.
17

18 ES: So, and I'm mindful of your comment that you're focusing on this
19 February meeting that was an issue in your complaint and I appreciate
20 bringing us back to focus here on that. Would it have made any
21 difference in your position on what happened at this meeting if it had
22 said law enforcement vs law?
23

24 RF: No, it would not.
25

26 ES: Okay. Do other members of the Commission have questions for Mr.
27 Fogg?
28

29 AH: I – I do have a questions. I just ultimately want to make sure I'm
30 understanding your ultimately the position that you're taken is that if
31 something is not specifically specified on an agenda your opinion is that
32 it should not be talked about at all at a public meeting is that ultimately
33 more or less what you're saying?
34

35 RF: Thank you, Mr. Hoffman, and may I add some clarity. Again towards the
36 top of the City of Martin agenda there was an opportunity for public to
37 comment. A local comment of a topic (inaudible) been chickens, there's
38 noisy chickens in town or roosters in town that can be dealt with by the
39 public during public comment. Likewise if you've got noisy chickens you
40 can complain about that towards the end of the meeting where it says
41 complaints. Here we have very clear guidance by statute. Statute tell us
42 if the governing body is going to speak on a topic the public is required to
43 have twenty-four hours notice. As Ms. Harris has pointed out in her
44 referral to the commission that's not the case here. An agenda had in
45 fact been approved after the agenda was approved the topic of combining
46 law and the topic of the Cozad property was then introduced and added

1 to after the fact. I believe that is what – not permitted by the current
2 statute. If statute offends we have a process it's called you petition the
3 legislature and the legislature may take it up at its subsequent session.
4 Thank you.
5

6 ES: Okay any of the other commission members have additional questions?
7 If there are no additional questions we will close out the oral presentation
8 portion and I think we typically go right into deliberation on the topic so
9 that we can bring clarity well it's all fresh in our minds. As I look at this
10 I have – I have my gut reaction was if we just saw law and we bring in all
11 these additional topics and boy are we really giving the community the
12 opportunity to know what we're going to talk about. However, you know
13 Law on the agenda is going to focus either on law enforcement or states
14 attorneys issues (inaudible) city attorney issues those things that relate
15 to law. We had that subcategory we know that those things are going to
16 pop up and we're going to have some general discussion. Especially if
17 these (inaudible) we meet once a month maybe, well we have to meet
18 once a month, but you're typically not coming in for these weekly or
19 every other day or um, sessions where we can focus in on good
20 subcategories in business and we have to because we have a higher
21 population base to deal with. I am leaning towards this being sufficient
22 notice saying we are going to discuss everything law beneath that. There
23 was no official action taking and I don't want to stifle the opportunity for
24 these commissions and council members and other folks who are
25 running these public meetings to come in and say we can't talk about
26 that we're going to have to wait another month.
27

28 KH: I agree with you. I think it's hard to sub categorize things because things
29 are going to come up that you didn't anticipate so if you go off script on
30 one of those items you could get yourself into hot water to if you're going
31 to say it has to be cutthroat black and white very specific. I think you
32 also do have to take into account the size. The smaller the rural
33 community and things like that – that you noted and that's generally
34 what they've done that's kind of how they've always operated and it's
35 always been the discussion under it and then again no action was taken
36 and I guess that was sort of a sentiment or sort of the point of bringing
37 up things when you're going to specifically board action on. I think one
38 of the agenda items had they were paying a bill for, and it had the
39 specific amount on it verse a discussion is something broad and then
40 further meetings occurred down the line for something that's actually
41 consist.
42

43 MS: And I intend to agree. I think if there had been any amount of decision
44 that was made we'd have a different conversation here today. The fact
45 that it remained just in discussion and then continued to a later meeting
46 certainly as it relates to the Cozad property brought forth by a member of

1 the community being allowed at the discretion of the City Council to
2 make that statement. I think it would be certainly against public policy
3 and good governance as Mr. Frankenstein alluded to not have that
4 conversation at that time when a member of the public bring it forth. I
5 think regardless of the fact that nothing went beyond discussion and law
6 in general although somewhat they was alluded to and mentioned on the
7 agenda gave notice to the public that a discussion of that nature
8 especially in a community where this has been an ongoing issue or
9 ongoing topic. People who were committed to it being involved with those
10 discussion likely would've recognized that that law category was the
11 opportunity that if something was to occur that was going to be the
12 moment as it related to discussion.

13
14 ES: Any of the other –

15
16 LR: And this is to Mr. Fogg, you know, I this isn't a question this is a
17 statement. I certainly understand your concern here as it relates to the
18 vagueness of the agenda item because I think that certainly that wasn't
19 the best practice but whether or not it violates the law is what we're here
20 to discuss today and particularly because it was there was no action
21 taken, there was no written contract, um, I tend to agree with everyone
22 else here that I do not believe that we – that it's a bridge to far to say that
23 the - the council there was in violation of this particular statute. I think
24 that the submission of the city was very well done laying out the
25 standards associated with the statute. The statute may very well could
26 probably be improved, but as it relates to specifically our application of
27 the facts of the law today. I would agree that because there was no
28 written – no written contract and no action taken that there is not a
29 violation of the open meetings law but that's not to say that it doesn't
30 disturb a little bit that there if it was the intent to speak specifically
31 about having a contract between the County and the City and you have a
32 standard on item on the agenda that just says law I'm not certain that
33 that's meaningful for the public but on the other than the concern that I
34 have here with the complaint Mr. Fogg is that it just doesn't appear to
35 violate the statute, but had there been a written contract and had there
36 been action taken it may very well have been a different outcome.

37
38 ES: With that discussion I'll look for a motion to determine or to find
39 specially that there has not been a violation of the open meetings law.

40
41 MS: So moved.

42
43 KH: I'll second.

44
45 AH: I'll second.

1 ES: We had two and I think you were beat on the floor here so we will hold
2 that as our second and Mr. Blair will have those recorded in the minutes
3 and I'll call for a vote. Do we do roll call?
4
5 SB: You don't need to do roll call.
6
7 ES: Okay I will ask all in favor of the motion.
8
9 KH: Aye
10
11 MS: Aye
12
13 LR: Aye
14
15 ES: Aye as well
16
17 AH: Aye
18
19 ES: Thank you. Any opposed? Hearing none we have unanimous decision on
20 that particular matter, and we thank Mr. Fogg for his presentation there
21 and Ms. Frankenstein as well. And we will move into the next matter
22 where Mr. Fogg is also the complaint so it will be matter C **In the Matter**
23 **of the Open Meeting Complaint 2024-02 Bennett County Board of**
24 **Commissioners** and as we are preparing to proceed into that just for
25 those that have no participated in these hearing before Mr. Blair is
26 usually so kind as to insure that this office has those draft findings
27 (inaudible)
28
29 SB: Time (inaudible)
30
31 ES: The draft findings.
32
33 SB: Oh yeah, yes I'll still do the findings.
34
35 ES: Okay so we are now moving into item C. We will have oral presentation
36 first and Mr. Fogg will be presented at 15 minutes to address the 2024
37 Bennett County Board of Commissioners complaint which is the third
38 matter on the agenda.
39
40 SB: If I may before Mr. Fogg begins. I will note just for the record I'm sure the
41 Commission noted also. There was no response received from the
42 Bennett County Commission on this complaint and no notification from
43 them whether anybody would be appearing on this complaint so
44 obviously Mr. Fogg is here but I just wanted to note that for the record.
45
46 ES: Okay Mr. Fogg. Are you still with us?

1
2 RF: Yes I am (inaudible)
3

4 ES: Okay so we will allow you go ahead and your 15 minute time clock will
5 begin and again you can reserve a portion for rebuttal if you so chose.
6

7 RF: Thank you and good morning again. The complaint is dated March 3,
8 2023, involving the Bennett County Board of Commissioners. As was just
9 mentioned dated September 4, 2024, I had received correspondence from
10 the Office of Attorney General State of South Dakota requesting that the
11 Bennett County Board of County Commissioners respond if they desire
12 to no later than September 2024. I find that their disinterest in
13 defending themselves is an admission to the facts I have presented and I
14 would request a default along that line. Thank you. I would reserve my
15 time.
16

17 ES: And with there being no other presentation here. I will remind Mr. Fogg
18 that the beginning we talked about the fact that our statute allows us to
19 proceed on written submission and we procedurally have allowed these
20 oral arguments so we can get our questions answered and so to say that
21 we will simply default because nobody is present I think that we will – we
22 will go ahead and proceed if there is further information outside of
23 relying on the default that you like to present I certainly would open that
24 up.
25

26 RF: If I may I would like to stand with what I have submitted to you. Along
27 with the cover from the State's Attorney Ms. Harris and again I thank
28 you for your time.
29

30 ES: Okay I think we will go right into questions and this one is slightly
31 different this was members of the actual commission were present at the
32 city council meeting, correct? Mr. Fogg?
33

34 RF: That would be (inaudible)
35

36 ES: I'm sorry I think you either bumped mute or we lost you here.
37

38 RF: The prior conversation that Ms. Frankenstein was (inaudible) I believe it
39 was about a month before this is the separate action verse the Bennett
40 County Board of County Commissioners.
41

42 ES: Correct and it was the actions by the Commissioners at the City Council
43 meeting is the subject of your complaint, correct?
44

45 RF: No, it is not. If I recall and this is the stretch because its been well over a
46 year now. This was one of the few times that the Bennett County Board

1 of County Commissioners actually met in a room of sufficient capacity for
2 the public to be present to see and hear what's going on. A motion was
3 called and they went in whatever they wanted to do with no second, no
4 vote. Since then this complaint has been filed. There has been no
5 response and no (inaudible) any allegation by the commission this is
6 separate from the earlier argument had concerning the City of Martin
7 and was just discussed a few minutes ago.
8

9 ES: Understood I was just creating some clarity for the record here sir. Do
10 other members of the Commission have questions for Mr. Fogg on this
11 file? Okay with that we will close the oral presentation portion and we
12 will go right into deliberation.
13

14 KH: This one appeared to be maybe more of a clean-cut violation that I've
15 seen. I think it's documented well in the minutes what occurred and
16 writing that was provided by the Bennett County State's Attorney also set
17 forth what I believe to be a violation there was action taken I think it's on
18 page four of the minutes that shows at the top of that page that four
19 commissioners and the Chair were present there was no second made on
20 a motion to go into executive session and no vote was taken. And then
21 there was an additional set of minutes that had been corrected at the
22 following regularly scheduled meeting I presume and again on the last
23 page of that its changed slightly but it indicates that a motion was made
24 to go into executive session there is no second and all voted in favor of
25 that. Just procedurally I believe that the motion is the basis that sets out
26 the question, but you need the second to be acted on in the first set of
27 minutes there is no second and there is no vote in the last one as I
28 indicated. It still indicates there was no second so really they can't action
29 on it, but also with I in favor of going into executive session.
30

31 MS: I agree I think that regardless of if we're looking at the original motion or
32 rather the original minutes or the minutes that were corrected on March
33 1 it's clear just one the record that there wasn't a second not to enter
34 executive session.
35

36 ES: So is that procedural issue or is that a open meetings issue?
37

38 MS: That's a good question I was trying to look up law as well as we were
39 sitting here specifically at least to 1-25-2 which cites to executive
40 session.
41

42 KH: I think it becomes an open meetings violation when they not – don't
43 follow the procedure and then still enter into the executive session and
44 hold that executive session without having the properly authority to go
45 in.
46

1 ES: Right and were the agenda item listing a specific issue.
2
3 MS: In chapter 1-25 being our northern light if you would for open meeting
4 violations is following under chapter 1-25 might also give some clarity to
5 that.
6
7 ES: Okay with that is anybody inclined to make a motion?
8
9 AH: There's – I think there's kind of two parts to this complaint one being
10 entering into executive session the other being regardless if it was
11 entered into properly or not on the vote was that the reason stated for
12 executive session was not proper. I don't think there's an issue with just
13 saying you're entering for contractual reasons I think that's specified 1-
14 25-2 that that is a legitimate reason to enter into executive session but
15 when you look at the last paragraph of 1-25-2 as been talked about
16 already there does have to be that vote to enter into executive session
17 which very clearly did not happen.
18
19 KH: I agree with that, as well, I guess I kind of skipped over the reason for
20 going in I do agree with Mr. Hoffman though that contractual agreements
21 and then the minutes citing the specific subsection to which they
22 intended to go in hit the mark however without the vote without the
23 second in the vote I do believe that would be a violation.
24
25 ES: Ms. Hoffman is that – is that a motion?
26
27 KH: I would make that motion.
28
29 ES: Okay Ms. Hoffman motioned to find that there is a violation is there a
30 second?
31
32 AH: I'll second that.
33
34 ES: Thank you. We have a first we have a second. I'll call for a vote all in
35 favor of the motion signify by saying aye.
36
37 KH: Aye
38
39 MS: Aye
40
41 LR: Aye
42
43 ES: Aye
44
45 AH: Aye
46

1 ES: Any opposed, okay, motion passed and historically again those findings
2 will circulate among us by Mr. Blair and the appropriate public sanction
3 essentially within those will be set forth so we will then move on to the
4 next matter of the agenda which is my favorite part of the agenda it says
5 lunch. But we will circle back first and touch base on agenda item a **In**
6 **the Matter of the Open Meeting Complaint 2021-02 Bennett County**
7 **Board of Commissioners**, Ms. Donovan had previously indicated she
8 would be present and we were holding that – we want to hold that to the
9 very end do you want to

10
11 SB: Ms. Donovan have you joined the Teams meeting or by phone?

12
13 MS: I would feel comfortable moving forward with it we provided a timeframe
14 as of the October 18 letter that was sent her to her as 9 am central time.
15 I know we were trying to give some grace as to whether or not potential
16 there was mix up on time zone regardless it would be 9:20 at this point
17 mountain time I think that given that I'm comfortable proceeding, but
18 otherwise differ.

19
20 ES: Okay very good let's circle back then let's do – let's just address that on
21 the written submissions. We will go with no oral presentation on that
22 agenda items so I'll just open it up on the floor for discussion. And I will
23 do as I did before just to make sure everybody has the right materials if I
24 can get to that file I think that I had actually done this before but we had
25 the complaints the August 26 Acknowledgments, the letter from Ms.
26 Donovan, the emails, letter to the Bennett County Commission,
27 September 4 letters, September 20 fax, email, October 18 letter to all
28 parties, our notice of hearing, agenda and our certificate of service. So,
29 as to, remind us all the Bennett County State's Attorney's Office had
30 provided that letter that set forth the concerns that there was on the
31 agenda mentioning executive session with Sheriff and the audio
32 recordings of the July 2, 2021 meeting it was reviewed they came out of
33 executive session with the sheriff and took action and made a motion to
34 get the Sheriff a raise. There was also some review of the August 4 2021
35 recordings by the Sheriff's office they again address raises and they
36 provided information to the commissioners who have not presented here
37 today. Discussion?

38
39 SB: I would note just for the record that contrary to the other file Bennett
40 County did the County Commission did provide a response in this file.
41 It's brief but they did provide a letter response.

42
43 ES: Yes and that was the September 20 2024 letter to the Open Meeting
44 Commission it does state that it was brought to the County
45 Commissioners attention that after the July 7 2021 Commission meeting
46 that we took action on a matter that was not listed on the agenda for

1 July 7, 2021, the Commission had taken action by making and
2 approving a motion to give pay raise that was discussed. And there's
3 some more details on it but in the final letter that paragraph says the
4 commission then decided to put the item of the transport officer a raise
5 wage effective 7-18-2021 on the agenda for the July 2021 meeting so
6 that it could be properly addressed it does essentially set forth there in
7 that they did what was alleged in the complaint. I commend them for
8 going back and addressing something they could've been potential issue,
9 but I think that the end of the day it's a technical violation and subject
10 (inaudible) thoughts?
11
12 KH: I would agree.
13
14 ES: Somebody want to make a motion?
15
16 LR: I'll make this one.
17
18 ES: Alright, and do we have a second?
19
20 MS: I'd second.
21
22 ES: Okay I have a motion and second on the floor if there's no further
23 discussion, I would ask that hold a vote. All in favor signify by saying
24 aye.
25
26 LR: Aye
27
28 MS: Aye
29
30 KH: Aye
31
32 ES: Aye
33
34 AH: Aye
35
36 ES: Is there anyone opposed? Okay motion is passed. Now as much as I
37 would love to just keep rolling so that we could get all these done I
38 suppose because it is listed that we would break until 1 o'clock I don't
39 want to.
40
41 SB: I did tell some individuals that if they were listed after lunch that they
42 could arrive after lunch so we're going to lunch. I'll know better next
43 time.
44
45 ES: Alright with that we will break until one.