

May 3, 2011

STATE OF SOUTH DAKOTA  
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN MEETING )                   ORDER  
COMPLAINT 11-02, SOUTH DAKOTA )   DISMISSING COMPLAINT  
STATE HISTORICAL SOCIETY        )

The Complainant in the above entitled matter is Ben Thompson. On December 18, 2010, Mr. Thompson attempted to lodge a complaint directly with the Open Meeting Commission. The letter of complaint generally alleged that the South Dakota State Historical Society had violated the Open Meeting Law concerning the Mobridge State Bank nomination to the National Registry. The date of the alleged offense was not stated.

Under SDCL 1-25-6 individuals lodging complaints under the Open Meeting Law must file a notarized complaint under oath with the State's Attorney in the county of the alleged offense. The OMC lacks authority to process a complaint absent a referral from a prosecutor. Accordingly, a response was sent to Mr. Thompson advising him to lodge his concerns with the State's Attorney in the county where the offense occurred.

Mr. Thompson subsequently lodged his Complaint with the Hughes County States Attorney. The Complaint reveals the Historical Society meeting at issue occurred in December 1998.

Under SDCL 1-25-6.1, a State's Attorney must (1) initiate a criminal prosecution, (2) determine the matter has no merit and provide the information to the Attorney General's office for statistical purposes, or (3) send the complaint and investigation file to the OMC for final resolution.

In this case, the State's Attorney reviewed the matter and determined that she lacked jurisdiction to pursue a criminal complaint because more than seven years had passed since the

date of the meeting in question. The seven year statute of limitations for misdemeanor violations of the open meeting law is the same as that for other misdemeanors. SDCL 23A-42-2.

The State's Attorney then sent the matter to the OMC for resolution. However, the seven year limitation also applies to any action filed with the OMC. Accordingly, this matter must be dismissed because the OMC lacks jurisdiction over conduct occurring more than seven years prior to the date of the meeting in question.

Further, the Historical Society's request to dismiss this matter points out that the Historical Society's meeting in 1998 predated the creation of the OMC. This point is well taken. The OMC was not in existence until July 1, 2004. If the legislature intended the OMC to have retroactive authority to handle matters occurring before its existence, the legislature would have stated that to be the case. The Open Meeting statutes will not be retroactively applied to any meetings that occurred before July 1, 2004.

Based on the foregoing, the OMC cannot consider the merits of the allegations lodged by Mr. Thompson and offers no opinion on their merits.

The OMC considered this matter on April 21, 2011 and authorized the undersigned Chairman to issue this Order.

SOUTH DAKOTA OPEN MEETING COMMISSION



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Mark Reedstrom, Chairman