WHAT RECORDS MUST BE AVAILABLE TO THE PUBLIC IN CONJUNCTION WITH PUBLIC MEETINGS?

A: SDCL 1-25-1.4 requires state boards, commissions, or departments to make public meeting materials available on http://boardsandcommissions.sd.gov. SDCL 1-27-1.16 requires that any other public body must post meeting materials that draft that minutes of public meetings must be made available to the public at the principal place of business for the public body within 10 business days after the meeting (or on the website for the public body within five business days). These laws are in addition to any specific requirements for public bodies (i.e., publication requirements in state law). Any public body that does not comply with the requirements of SDCL 1-25-1.4 and 1-27-1.16 is subject to a civil penalty of up to $100 per day for each violation. A violation of this section is considered a Class 2 misdemeanor.

WHAT REQUIREMENTS APPLY TO TASK FORCES, COMMITTEES AND WORKING GROUPS?

A: Task forces and committees that exercise "sovereign power" and are created by statute, ordinance, or resolution and that have recommendations or reports that are made or approved by the public meeting laws, SDCL 1-25-1. Task force, committees, and working groups that are not created by statute, ordinance, or proclamation are not subject to the open meetings laws. If a task force, committee, or working group that is not subject to the open meetings laws meets at a location that is located at an office of the public body or its employees, the meeting is considered a "meeting" for purposes of the open meetings laws. The analysis of these two definitions leads to the conclusion that discussions that include email communications of a public body and which discuss the official business of that body could be considered "meetings" for purposes of the open meetings laws. Email participation in scheduling or similar activity would not, under this analysis, constitute a public meeting.

WHAT ARE EMAIL DISCUSSIONS "MEETINGS" FOR PURPOSES OF THIS LAW?

A: The definition of an "official meeting" in SDCL 1-25-1.16 references teleconferences. The definition of a "teleconference" in SDCL 1-25-1.12 includes the exchange of information via the internet or any other electronic medium. The analysis of these two definitions leads to the conclusion that discussions that include email communications of a public body and which discuss the official business of that body could be considered "meetings" for purposes of the open meetings laws.

CONDUCTING THE PUBLIC'S BUSINESS IN PUBLIC

A guide to South Dakota's Open Meetings Law (Revised Fall 2017)

Prepared by representatives of the:
S.D. Attorney General's Office
S.D. Municipal League
Associated School Boards of S.D.
S.D. Association of County Commissioners
S.D. Association of County Officials
S.D. Newspaper Association
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S.D. Association of Towns and Townships

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ATTACHMENT #11

PERSISTENT S.D. OPEN MEETINGS STATUTES
(186x144)

(18x144)

(10x144)
Q: WHAT IS SOUTH DAKOTA’S OPEN MEETINGS LAW?

A: South Dakota’s open meetings law embodies the principle that the public is entitled to the greatest possible information about public affairs and is intended to encourage public participation in government. SDCL 1-25-1 requires that official meetings of public bodies must be public and notice is to be given of such meetings at least 24 hours in advance of the meetings. The law also requires that for a meeting to be open, there must be a quorum of the public body present. When a quorum is present, the meeting must also be open to the public. While the law does not define “quorum,” it is generally understood to mean a majority of the members of a public body. When a quorum is present, the meeting must also be open to the public. While the law does not define “quorum,” it is generally understood to mean a majority of the members of a public body. Openness in government is encouraged.

Q: WHAT DOES THE OPEN MEETINGS LAW APPLY TO?

A: The open meetings law applies to all public bodies “of the state or its political subdivisions” that exercise “sovereign power derived from state law.” SDCL 1-25-1. This includes cities, counties, school boards and other public bodies created by ordinance or resolution, such as appointed boards, task forces, and committees, so long as they have the authority to exercise sovereign power. Although no court decisions have been issued on the subject, this probably does not include bodies that are not created by statute, ordinance, or resolution, or that serve only in an advisory capacity. The state Constitution has its own website, the notice must be posted on the public website for the Office of the Attorney General. http://boardsandcommissions.sd.gov.

Q: WHEN PUBLIC BUSINESS IS BEING DISCUSSED?

A: Excluding the media or public from a meeting that has not been properly closed subjects the public body or the member involved to (a) prosecution as a Class 2 misdemeanor punishable by a maximum sentence of 30 days in jail, a $500 fine or both; (b) a reprimand by the Open Meetings Commission (“OMC”); or (c) for any person who has knowledge of a violation, the State’s Attorney may file charges in either state or federal court.

Q: WHEN CAN A MEETING BE CLOSED TO THE PUBLIC AND MEDIA?

A: SDCL 1-25-2 allows a public body to close a meeting for the following purposes: 1) to discuss personnel issues pertaining to officers or employees; 2) consideration of the performance or discipline of a student, or the student’s participation in interscholastic activities; 3) consulting with or reviewing communications from legal counsel; 4) pending litigation or contractual matters; 5) employee contract negotiations; or 6) to discuss marketing or pricing strategies of a publicly-owned competitive business. The statute also recognizes that executive session may be appropriate to comport with other laws that require confidentiality or permit executive or closed meetings. Federal law pertaining to students and medical records will also cause school districts and other entities to conduct executive sessions or conduct meetings so as to refrain from releasing information. Meetings may also be closed by cities and counties for certain economic development matters. SDCL 9-34-19.

Q: HOW ARE ISSUES REFERRED TO THE OPEN MEETINGS COMMISSION (“OMC”)?

A: Persons alleging violations of the open meetings laws must make their complaints with law enforcement officials in the county where the violation is alleged. After a signed notarized complaint is made under oath, and any necessary investigation is conducted, the State’s Attorney may (a) prosecute the case as a misdemeanor, (b) find that the matter has been properly closed, or (c) file a report with the OMC for statistical purposes or (c) forward the complaint to the OMC for a determination. The OMC is comprised of five State’s Attorneys appointed by the Attorney General. The OMC examines each violation has occurred and makes written public findings explaining its reasons. If you have questions on the procedures or status of a pending case, you may contact the Attorney General’s Office at 605-773-2513 to talk to an attorney who can answer your questions.

Q: WHAT DOES THE TERM “SOVEREIGN POWER” MEAN?

A: The open meetings law does not define this term, but generally means the power to levy taxes, impose penalties, make special assessments, create ordinances, abate nuisances, regulate the conduct of others, or perform other traditional government functions. The term may include the exercise of many other governmental functions. If an entity is unclear whether it is exercising “sovereign power” it should consult with legal counsel.

Q: MAY AGENDA ITEMS BE CONSIDERED IF THEY ARE ADDED LESS THAN 24 HOURS BEFORE A MEETING?

A: Proposed agendas for public meetings must be posted at least 24 hours in advance of the meeting. The purpose of the advance notice is to provide advance notice of the topics to be discussed. If a meeting is held where the agenda is not available to the public at least 24 hours before the meeting, the board members involved could be required to repay any public funds spent under the contract.

Q: HOW OFTEN SHOULD AGENDAS BE POSTED ON THE WEBSITE?

A: The open meetings law requires that agendas be posted at least 24 hours in advance of the meeting. The agenda for a public meeting must be posted on the website for the Office of the Attorney General. http://boardsandcommissions.sd.gov.

Q: WHAT HAPPENS IF THE MEDIA OR PUBLIC IS IMPROPERLY EXCLUDED FROM A MEETING OR OTHER VIOLATIONS OF THE OPEN MEETINGS LAW OCCUR?

A: Excluding the media or public from a meeting that has not been properly closed subjects the public body or the member involved to (a) prosecution as a Class 2 misdemeanor punishable by a maximum sentence of 30 days in jail, a $500 fine or both; (b) a reprimand by the Open Meetings Commission (“OMC”); or (c) for any person who has knowledge of a violation, the State’s Attorney may file charges in either state or federal court.

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Q: WHO ARE LOCAL NEWS MEDIA?

A: There is no definition of “local news media” in SDCL ch. 1-25. “News media” is defined in SDCL 13-1-57 generally as those personnel of a newspaper, periodical, news service, radio station, or television station regardless of the medium through which their content is delivered. The Attorney General is of the opinion that “local news media” is all news media – broadcast and print – that regularly carry news to the community.

Q: WHAT IS THE PROPER PROCEDURE FOR EXECUTIVE SESSIONS?

A: Motions for executive sessions must refer to the specific state or federal law allowing for the executive session (i.e. “pursuant to SDCL 1-25-21d.”). Also, best practice to encourage public participation in government. SDCL 1-25.1-3 requires that official meetings of public bodies must be public and notice is to be given of a notice by posting a proposed agenda at least 72 continuous hours before a meeting is scheduled to start (this does not include the day the agenda is posted, or any weekend or legal holiday). Each state board, commission, or department required to give notice of a public notice by posting its proposed agenda on http://boardsandcommissions.sd.gov.

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