

OPEN MEETINGS



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BASIC RULE

SDCL 1-25-1

- “The official meetings of the state and its political subdivisions are open to the public...”

PURPOSE

“...to prohibit actions being taken at secret meetings where it is impossible for the interested public to become fully informed and to detect improper influences.”

- *Olson v. Cass*, 349 N.W.2d 435 (S.D. 1984)

OFFICIAL MEETING?

An official meeting is:

“Any meeting of a quorum of a public body at which official business or public policy of that public body is discussed or decided ... whether in person or by means of teleconference.”

- SDCL 1-25-12(3)

OFFICIAL MEETING?

Need for an official meeting:

1. Quorum
2. Discussion/decision -- official business or public policy

OFFICIAL MEETING

Regular meetings of the body... But, what about?

- Lunches
 - Sporting events
 - Social events
 - Email discussions?
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OFFICIAL MEETING

Email Discussions?

- Definition of teleconference includes “any ... electronic medium, including the internet.”
 - SDCL 1-25-12(4)

OFFICIAL MEETING -- EXCEPTIONS

All found in SDCL 1-25-1

1. Meeting with other bodies

- “provide information or attend the official meeting of another [body]...”
- 2nd body must meet the notice requirements of Ch. 1-25

OFFICIAL MEETING -- EXCEPTIONS

2. Attending a press conference “called by a representative of the public body.”

3. Event by Non-gov't entity where the public body does not control the agenda

- Must post “notice of agenda” to include date, time, and location
- must meet posting requirements of SDCL ch. 1-25

OFFICIAL MEETING -- EXCEPTIONS

4. Quorum of “township supervisors, road district trustees, or trustees for a [3rd class municipality] who meet solely for the purpose of:”

- Implementing previously adopted public policy,
- Carrying out ministerial functions, or
- Undertaking factual investigations of conditions related to public safety.

COMMITTEES/TASK FORCES

Must follow open meetings rules if created by statute, ordinance, or resolution and have authority to exercise “sovereign power.”

- SDCL 1-25-12(1)

If not one of the above, then not a public body bound by open meeting statutes, and then...

- Final recommendation, finding, or report SHALL be reported in open meeting of the governing body.
- Governing body MUST DELAY final action until next meeting.
SDCL 1-27-1.18
- Encouraged to comply with open meetings requirements

PUBLIC NOTICE

SDCL 1-25-1.1 -- Political Subdivisions

- Must Provide:
 - Notice of the meeting, including a *proposed* agenda
 - Must state the date, time and location
- Must Be:
 - Visible to the public, readable, and in an accessible location
 - At least “an entire, *continuous twenty-four hours immediately preceding*” the meeting
 - Posted at the principal office of the public body
- Must also be posted on website if website exists

PUBLIC NOTICE

Special or rescheduled meetings

- Notice requirements the same “to the extent that circumstances permit” SDCL 1-25-1.1
- Notice must be delivered by mail, email, or in person to news media who have requested notice
 - Must make an honest effort

Remember: must comply with any other requirements of state code?

- Special publication or other notice requirements elsewhere in state law

PUBLIC NOTICE

SDCL 1-25-1.3 – the State (incl. all boards and agencies)

- Must Provide:
 - Notice of the meeting with proposed agenda
 - Must state the date, time and location

- Must Be:
 - Visible to the public, readable, and in an accessible location
 - Posted at the principal office of the public body
 - At least 72 hours before the meeting is scheduled to start
 - Does not include weekends, or holidays

- Must also be posted on state website designated by BFM
 - <http://boardsandcommissions.sd.gov/>

PRINTED MATERIALS

SDCL 1-27-1.16

- Must be made available to the public when provided to the members of the body or at least 24 hrs prior to the meeting
 - Posted on the website
 - Made available at prin. place of business
- If not posted on website: at least ONE copy must be in the meeting room
- Not required for exempt material
 - Attorney-client or Executive Session materials

PUBLIC COMMENT

SDCL 1-25-1

Must allow public comment at every official meeting

Limited at the public body's discretion re: time allowed for each topic and the total time allowed for public comment

Not Required for official meetings held solely for certain purposes – i.e. executive session, inauguration or swearing in, presentation of annual report

PUBLIC RECORDING

SDCL 1-25-11

- The public is allowed to audio or video record a public meeting as long as
 - Reasonable
 - Obvious
 - Not disruptive

EXECUTIVE SESSION

SDCL 1-25-2

May be held for the purpose of discussing:

- Public officer or employee competence or qualifications
- Student discipline or eligibility for programs or activities
- Communications with attorney, or reviewing communications related to proposed or pending litigation or contract matters
- Preparing for or conducting labor negotiations
- Marketing strategies of government owned business
- Information relating to the protection of public or private property and any person on that property.
 - Very specific subsections

EXECUTIVE SESSION

Not limited to only the 6 listed subsections

- “Nothing in 1-25-1 or this section prevents an executive or closed meeting if the federal or state Constitution or the federal or state statutes require or permit.” SDCL 1-25-2

Covers other grants of confidentiality or privilege found in state or federal law

- attorney/client privilege
- economic development information (SDCL 9-34-19)
- Confidential medical or mental health information

EXECUTIVE SESSION

Motion, second, and majority vote of those present to enter

- Purpose and legal citation must be stated in the closure motion.

NO official action can be taken in executive session

- Official action may only be taken upon return to open session

NO discussions of any other matters other than those cited in the closure motion

TELECONFERENCES

Teleconference: information exchanged by audio, video, or electronic medium – including the internet

- SDCL 1-25-12(4)

Member is present if answers present during roll call

Votes may be taken by voice vote unless a member votes in the negative – then vote must proceed via roll call

TELECONFERENCES

Notice Requirements

- Posting and Agenda Requirements are the SAME
- Allow “one or more places” for the public to listen and participate.
 - SDCL 1-25-1.6
- If less than a quorum of members present at the location for public participation, then must provide public the opportunity to listen via telephone or internet
- Does not apply to executive or closed meetings

MEETING MINUTES

SDCL 1-25-3: State entities must keep detailed minutes

- Must include each members vote on any roll call
- Must be available for inspection at all times at PPOB

SDCL 7-10-1

- County Auditor to keep accurate record of official proceedings

SDCL 9-18-1.1

- City Finance Officer responsible for keeping a record of the proceedings
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MEETING MINUTES

SDCL 1-27-1.17

- Unapproved draft minutes of *any meeting* held pursuant to SDCL 1-25-1
 - Must be made available w/in 10 business days after meeting
 - Does not apply if audio/video recording is available on website within 5 business days after meeting

STATE'S ATTORNEY ENFORCEMENT

SDCL 1-25-6 & 1-25-6.1

State's Attorney has 3 options:

- Charge Class 2 Misdemeanor
- Dismiss (“no merits” letter)
 - Send copy of complaint and investigation file to AG
- Refer to Open Meeting Commission for further action

Conflict of interest – refer to another SA

- Refer to AG only if complaint against Board of County Commissioners, and only if no other conflict option available

OPEN MEETINGS COMMISSION

5 State's Attorneys appointed by the Attorney General

Jurisdiction only once complaint referred by a State's Attorney

- No independent review of open meetings complaints

Jurisdiction only over violations of SDCL ch. 1-25

No investigative authority

- Rely upon the record developed by the State's Attorney and the parties

OPEN MEETINGS COMMISSION

Procedure:

- State's Attorney receives complaint and investigates
 - Complaint must be notarized
- State's Attorney makes referral to OMC
- Public Body given opportunity to respond
- Hearing scheduled and arguments heard
- Majority of OMC makes decision
- Written decision issued and filed with A.G.

OPEN MEETINGS COMMISSION

No right of appeal -- decision of the OMC is final

No statutory mechanism for reconsideration of OMC decision

If OMC finds a violation:

- Can only issue public reprimand
 - Cannot impose fines or other penalties
 - Cannot send back to State's Attorney or to Attorney General for criminal prosecution

Final decision is a public record

2025 LEGISLATION

Senate Bill 74

- Attorney General required to annually publish an explanation of open meetings laws
- Public bodies must annually review AG explanation
 - And any other material provided by the AG
- Public body must report the review in their minutes
- Signed by the Governor – Effective July 1

2025 LEGISLATION

House Bill 1059

- Changes definition of an official meeting to specific include e-mail, instant messaging, social media, text messaging, or virtual meetings
 - Discussing or deciding official business or public policy via those means now explicitly covered
- Clarifies that discussions for purposes of scheduling meetings or confirming attendance at a future meeting do not fall within definition of “official meeting”
- Has passed the House – currently being considered by the Senate

QUESTIONS?



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