

# OPEN MEETINGS

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# OBJECTIVES

1. Overview of state open meetings laws

- SDCL ch. 1-25

2. Describe enforcement of open meetings violations

# 2019 LEGISLATIVE CHANGES

## Senate Bill 91

- Minor changes to the substantive content of SDCL ch. 1-25
- Reorganized and made other style & form changes
- Took effect on July 1, 2019

# 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

Regular meetings of the body...

But, what about?

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

# 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]...”
- 2<sup>nd</sup> 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
  - Post “notice of quorum” 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 [3<sup>rd</sup> 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.

# PUBLIC NOTICE

SDCL 1-25-1.3 -- 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/>

# 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

# PRINTED MATERIALS

## SDCL 1-27-1.16

- Must be made public when provided to the members of the body or at least 24 hrs prior to the meeting, whichever is later
  - Posted on the website or
  - 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

# MEETING MINUTES

## SDCL 1-25-3

State entities must keep detailed minutes available at principal place of business.

## 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

# TELECONFERENCES

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

- SDCL 1-25-12(4)

Can be used to conduct a hearing or take final disposition on an administrative rule

- SDCL 1-25-1.5

Member is present if answers present during roll call

Every vote must be taken by roll call



# TELECONFERENCES

## Notice Requirements

- Posting and Agenda Requirements are the SAME
- Allow “at least one” place for the public to listen and participate.
  - SDCL 1-25-1.6
- If less than 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

# 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

# EXECUTIVE SESSION

May be held for the purpose of discussing:

- Employee competence or qualifications (independent contractors are not “employees”)
- Student discipline or eligibility for programs or activities
- Communications with attorney regarding proposed or pending litigation, or contract matters
- Preparing for or conducting labor negotiations
- Marketing strategies of government owned business
- Public safety information (SDCL 1-27-1.5(8)), or emergency response information (SDCL 1-27-1.5(17)).

# EXECUTIVE SESSION

Not limited to only the 6 listed situations

- “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 9-39-19)
- 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 motion

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# 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

# PUBLIC COMMENT

SDCL 1-25-1

Must allow public comment period at meeting

Limited at the public body's discretion

Minimum -- Must be allowed at every regularly scheduled meeting designated as such by statute, rule, or ordinance

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# 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 makes referral to Open Meetings Commission (OMC)
- Public Body given opportunity respond in writing
- 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

QUESTIONS?



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