

# 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?

## 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

- 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 [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.

## 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

# 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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