OPEN MEETINGS

South Dakota Office of the Attorney General
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BASIC RULE

SDCL 1-25-1

• All official meetings of public bodies “are open to the public.”
PURPOSE OF THIS LAW

“...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)
WHAT IS AN OFFICIAL MEETING?

An official meeting is a:

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

- SDCL 1-25-1
- Added to statute by 2016 Senate Bill 73
OFFICIAL MEETINGS

Regular meetings of the body…

But, what about?

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

Definition of teleconference has been amended to include:

- “any … electronic medium, including the internet.”
  - SDCL 1-25-1.2
  - Senate Bill 73, 2016 Session
OFFICIAL MEETINGS

Exception: Meeting with other bodies?

- “It is not an official meeting of one [body] if its members provide information or attend the official meeting of another [body]…” (SDCL 1-25-1)

- 2nd body must meet the notice requirements of SDCL 1-25-1.1 or 1-25-1.3
OFFICIAL MEETINGS

Another Exception (also in 1-25-1):

- 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.

- Not subject to the provisions of 1-25
PUBLIC NOTICE

SDCL 1-25-1.1

• All public bodies (except State and its agencies)

• Must Provide:
  ▪ Notice of the meeting, including a *proposed* agenda
  ▪ Must state the date, time and location of the meeting

• 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

• Shall also be posted on website if website exists
PUBLIC NOTICE

Special or rescheduled meetings

• Posting and agenda requirements the same as regular meetings

• Notice shall be delivered by mail, email or in person to members of the local news media who have requested notice
  ▪ Must make honest effort

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

• Special publication or other notice requirements
PUBLIC NOTICE

SDCL 1-25-1.3 (added 2016 & revised 2017)

- State, including its boards, commissions or departments
- Must Provide:
  - Notice of the Meeting with proposed agenda
  - At the principal office of the public body
  - Must state the date, time and location of the meeting
- Must Be:
  - Visible to the public, readable, and in an accessible location
  - At least 72 hours before the meeting is scheduled to start
    - Does not include: the day agenda posted, nor weekends, or holidays
  - Shall also be posted on state website designated by BFM
    - http://boardsandcommissions.sd.gov/
PRINTED MATERIALS (1-27-1.16)

Must be made public when provided to the members of the body

- Posted on the website OR
- Made available at PPOB at least 24 hrs prior to meeting

If not posted on website:

- At least ONE copy in the meeting room

Not required for exempt material

- Attorney-client confidential material
- Executive/closed meeting materials
MEETING MINUTES
SDCL 1-25-3
• Any State Board or Commission must keep detailed minutes
• Must report how each member voted on any roll call vote
• 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
• Auditor/Clerk 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 1-25-2
  ▪ 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 1-25-1.2

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

- SDCL 1-25-1

Member is present if answers present during roll call

Every vote shall be taken by roll call
TELECONFERENCE NOTICE

Posting and Agenda Requirements are SAME

Allow “at least one” place for the public to listen and participate.

- SDCL 1-25-1

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 proclamation and have authority to exercise “sovereign power.”

- SDCL 1-25-1

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)
COMMITTEES/TASK FORCES

If not created by statute, ordinance or proclamation, or are advisory:

• May not be subject to open meetings rules
• Encouraged to comply
• Ask legal advice if unsure
EXECUTIVE SESSION (SDCL 1-25-2)

May be held for the purpose of:

- Employee/Personnel Matters (independent contractors are not “employees”)
- Student Issues
- Communications with attorney regarding proposed or pending litigation, or contracts
- Labor Negotiations
- Marketing Strategies

Also, Other statutory grants of confidentiality or privilege

- Such as: attorney/client privilege, economic development (SDCL 9-39-19)
EXECUTIVE SESSION LIMITATIONS

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
PUBLIC RECORDING OF MEETINGS

SDCL 1-25-11 (2016 Session)

• Member of the public is allowed to audio or video record a public meeting as long as
  ▪ Reasonable
  ▪ Obvious
  ▪ Not disruptive
STATE’S ATTORNEY ENFORCEMENT

SDCL 1-25-6

Charge Class 2 Misdemeanor

Dismiss ("no merits” letter)
  • Send copy of complaint and investigation to AG

Refer to Open Meeting Commission

Conflict of interest – refer to another SA
  • Refer to AG ONLY if complaint against Board of County Commissioners
OPEN MEETINGS COMMISSION

Began in 2004

Approximately 50 decisions

Review open meetings issues related to 1-25 and some provisions of 1-27

Information can be found on Attorney General’s website: www.atg.sd.gov
OPEN MEETINGS COMMISSION

Comprised of 5 State’s Attorneys appointed by Attorney General

Issues written findings and legal conclusions on each matter heard.
OPEN MEETINGS COMMISSION

Final Decision:

- Made by majority of commission members
- Filed with Attorney General
- Provided to public entity involved, State’s Attorney, and anyone requesting the final decision
- No right of appeal, and no mechanism for reconsideration

If find violation:

- Issue public reprimand
- Cannot impose fines or other penalties
- Cannot send back to State’s Attorney or to Attorney General for criminal prosecution

All findings/public censures are public record
OPEN MEETINGS
2017 LEGISLATIVE CHANGES
2017 LEGISLATION

- **House Bill 1006**
  - Made amendments to SDCL 1-25-1.3 regarding notice of meetings by the State, its departments, or any state board or commission
  - Must post a copy of the proposed agenda at least 72 hours before the meeting is scheduled to start.
    - Does not include the day the agenda is posted
    - Does not include Saturday, Sunday or legal holidays
QUESTIONS?
DISCLAIMER

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