

Open meetings



Dated 12/1/2025

Beverly Katz

Assistant Attorney General

Disclaimer

- Nothing contained in, or said during, this presentation is intended to be the official position of the South Dakota Open Meetings Commission or any member of the Commission.
- Nothing contained in, or said during, this presentation is intended to be the opinion of the Attorney General or the official opinion of the Attorney General's Office.

Basic Rule

SDCL 1-25-1

- All official meetings of any public body are open to the public unless a specific law is cited to close the meeting.

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 ?

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 or electronic means.”

- SDCL 1-25-12(1)

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 an official meeting specifically recognizes “electronic means” which is defined to include:
 - E-mail
 - Instant messaging
 - Social media
 - Text messaging
 - Virtual meeting platforms
 - SDCL 1-25-12(1)

Communications for scheduling purposes are excluded

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(2)

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 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
- 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

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 of the meeting
- 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 principal 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(5)

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

Annual Review Open Meetings Laws

All public bodies required to follow the open meetings laws in SDCL ch. 1-25 must annually review:

- An explanation of the laws prepared by the Attorney General, and
- Any other material pertaining to open meetings provided by the attorney general, and
- Must report completion of the review in the minutes of the public body

State's Attorney Enforcement

Under SDCL 1-25-6 and 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
- IF conflict of interest with an alleged complaint against the board of county commissioners
 - Refer to another SA
 - Refer to AG only if no other conflict option available

Open Meetings Commission

5 State's Attorneys or Deputy State's Attorneys appointed by the Attorney General

Jurisdiction occurs only upon 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 Attorney General

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?

Contact INFO

(605) 773-3215

Beverly.Katz@state.sd.us

atg.sd.gov