



PRIMER ON SOUTH DAKOTA OPEN MEETINGS LAWS

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SOUTH DAKOTA ASSOCIATION OF COUNTY COMMISSIONERS

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South Dakota Open Meetings Act:

- Covers an “Official Meeting” of any “Public Body”
 - “Public Body” includes a political subdivision, including any association, authority, board, commission, council, task force, school district, **county**, city, township . . . which is created by statute, ordinance or resolution and is vested with the authority to **exercise any sovereign power**.
 - “Official meeting” occurs whenever a quorum meets to discuss **or** decide official business. SDCL 1-25-1

“Sovereign Power”

The ability to exercise government power

Examples:

Levy or Abate Taxes

Regulate Utility Rates

Zone Property

Issue conditional use permits

Authorize Expenditures

Issue liquor licenses

Budget public funds

Issue government contracts

Enact ordinances and
resolutions

Examples of County Boards/Commissions exercising sovereign power:

County Commission

Planning and Zoning Board

Board of Adjustment

County Weed Board

Task Force Created by Resolution

Does the Act apply?

- Attend a Regional/National workshop with other members of your public body
- Attend a social function, along with a majority of the public body
- Upon invitation, body attends a meeting of another public body
- Change order authorization request via separate emails to each elected official. (SDCL 1-25-1 requires quorum where official business is “discussed or decided”)
- Circulate an invoice or a letter for signature outside of a meeting

Notice Requirements

- Act requires public notice of the date, hour, place and **proposed** agenda of every official meeting—both open meetings and executive sessions.
 - Public notice must be visible for a “**continuous**” twenty-four (24) hours prior to the meeting at the principal office of the public body; must be “visible,” “readable” and “accessible.” Usually post on outside door, with lighting for visibility.
 - Post on website at same time, if a website exists.
 - Provide notice to those who specifically request it, i.e. media.
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Teleconference meetings

- Statute allows teleconference meetings—
“Teleconference” means by any audio, video, or electronic medium, including the internet.
- Must provide one or more places for the public to listen and participate in the teleconference.
- Public notice requirements still apply

Executive Sessions

May only be held for authorized purposes, including:

- Discussing the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee. “Employee” does not include independent contractor;
 - Consulting with legal counsel or reviewing communications from legal counsel about proposed or pending litigation or contractual matters;
 - Preparing for contract negotiations or negotiating with employees or employee representatives.
 - Source: SDCL 1-25-2(1), (3) and (4)
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Executive Sessions--continued

- Motion, second and majority vote required to go into executive session. Motion should state purpose and cite the statute
- Executive Session topic(s) limited to purpose(s) stated in the motion.
- No official action may be taken during a closed meeting.
- State Constitution or federal or state law may require or permit other purposes for closed session—i.e. to discuss a medical matter of a citizen; physician licensing

Executive Sessions—Proper?

- Public body reviews the job performance of one of their employees.
 - Public body discusses/directs the public entity's negotiating team on upcoming negotiations with local government employees' union.
 - Public body seeks advice about legal matters, pending or contemplated litigation or settlement offers with their attorney present and actively participating.
 - Public body discusses a security audit with law enforcement personnel about possible security risks during their meetings.
 - Public body discusses contracts
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Materials relating to agenda items

Any material prepared by or at the direction of the governing body or its employees, and distributed prior to the public meeting must be posted on the website or made available at the official business office of the governing body at least 24-hours prior to the meeting or at the time when the material is distributed, whichever is later.

If not posted to the website, then at least one copy of the printed material shall be available in the meeting room for inspection by any person while the governing body is considering the printed material.

Not applicable if material related to an executive session item or otherwise privileged, such as attorney-client communications.

Source: SDCL 1-27-1.16



Draft Minutes of Public Meeting

The draft minutes of any public meeting required to be kept by law shall be available for inspection within **ten business days** after the meeting.

Exception if an audio or video recording of the meeting is available to the public on the governing body's website within five business days after the meeting.

Recommendations, findings and reports of appointed working groups

Any final recommendations, findings, or reports that result from a meeting of a working group which is not a political subdivision or a “public body” shall be reported in open meeting to the governing body which appointed the working group.

The governing body may not take official action on the recommendations, findings, or reports until the next meeting of the governing body.

Source: SDCL 1-27-1.18



Processing Complaints

State's Attorney is charged with receiving and taking action on any complaints of alleged violations of the Act.

State's Attorney options:

1. Prosecute the case (certain violations can be a Class 2 Misdemeanor);
2. Determine the complaint has no merit;
3. Send the complaint and any investigation file to the SD Open Meetings Commission for further action; or
4. If a complaint alleges a violation by the Board of County Commissioners, then may refer the complaint to another state's attorney or to the Attorney General for action.

SD Open Meetings Commission

Comprised of five State's Attorneys appointed by the SD Attorney General.

Considers referred complaints from state's attorneys.

If a violation found, then issues a public reprimand to the offending official or governmental entity. Those violations may not then be prosecuted by the state's attorney or the Attorney General.

All findings and public censures are public records. Posted on Attorney General website.

MEETING CHECKLIST TEMPLATE

DATE OF MEETING: _____

SETTING UP THE MEETING:

_____ Set a meeting schedule for the entire year; or schedule the next meeting in open discussion at the end of your last public meeting; or

_____ Contact each Public Body (Body) member separately via phone or email to obtain the most acceptable date. Once all separate responses from members received, phone or e-mail all of the members immediately with confirmation of the meeting date/time/location. Remind members to not reply all to an email if they have any individual questions/suggestions for the meeting organizer.

NOTICE OF MEETING/AGENDA and any ATTACHMENTS:

_____ Prepare the Agenda. Obtain Chair approval_____. The Agenda must include the date, time, and location of the meeting.



MEETING CHECKLIST (CONTINUED)

_____ Prepare/compile any attachments for the Agenda, which should include draft minutes from the last meeting and any items/documents to be given to all the members in advance of the meeting.

_____ Send Agenda/attachments to Body members.

_____ If any attachments are provided to all members in advance of the meeting, then those documents must be simultaneously available for public inspection at the Body's principal office.

_____ Documents provided in advance should also be simultaneously posted on the Body's website, if any, at least 24-hours in advance of the meeting or at the time those documents were provided to all members, whichever is later.

MEETING CHECKLIST (CONTINUED)

_____ If the documents provided to all members in advance are not posted on the Body's website, if any, then the documents must be available for inspection during the meeting itself. It is a good practice to announce at the meeting that one paper copy of the materials is available for inspection either at the start of the meeting or when the documents are provided to the members (if distributed at that time). The minutes should also reflect that this announcement was made. Only confidential documents related to an executive session matter specifically authorized by statute, or any attorney-client privileged documents, may be withheld from the documents that must be publicly available.

_____ Post the Agenda at the principal office of the Body at least 24 hours in advance of the meeting. The posting must be for an entire and continuous 24-hour period before the meeting. A preferred and standard method is to post the Agenda inside an entry doorway window to the Body's principal office which is illuminated by an outside light at night.

_____ Post Agenda simultaneously on the Body's website, if any, at least 24 hours in advance of the meeting. At least 24 hours before the meeting, the person compiling this checklist should confirm that the web postings are up without any technical difficulties.

_____ Provide Agenda to any media members or other individuals who have requested advance notice of the meeting.

Final considerations

If a meeting must be continued to another day/time:

- Must provide notice to local news media and others who have requested notice.
- Must comply with regular meeting notice requirements to the extent the circumstances permit.
- Preferred method is to do another publicly noticed meeting, with at least 24-hours notice.

OMC has not rendered a direct opinion on emergency meetings where an argument would be made that the public body could not comply with the 24-hour notice requirement. Dicta would suggest that emergency situations would not be a violation—but cannot be certain.

Analogy: SDCL 7-18A-9: effective date of resolutions and ordinances: twenty days unless **“necessary for the immediate preservation of the public peace, health, or safety, or support of the county government and its existing public institutions. . . .”**

GOVERNMENT PRACTICES HOTLINE JANUARY 2019



QUESTIONS?

Thank you!

Disclaimer: while the presenters are attorneys, this presentation is for general information purposes only and should not be construed as providing legal advice or opinions for a specific situation. The audience is encouraged to contact the attorney of their choice for any specific legal discussion and legal advice.

