



# ASBSD/SASD Annual Convention

## OPEN MEETINGS (PUBLIC MEETINGS)

***(It is the Law!)***

*Gerry Kaufman, ASBSD Director of Policy & Legal Services, and  
Randall Royer, ASBSD Leadership Development Director*



## SDCL 1-25-1

- official meetings are open to the public
- unless a specific law is cited to close the meeting to the public



**SDCL 1-25-2(1), (2), (3), (4) and/or (5)**

**OR**

**SDCL 19-13-3(1) [Client's privilege on confidential communications with lawyer.]**



## SDCL 1-25-1 (2016)

- **official meeting =**
- **any meeting of a quorum of board +**
- **when official business of school board/district +**
- **is discussed or decided, or public policy is formulated +**
- **in person or by means of teleconference**



## SDCL 1-25-1.2

### **Teleconference defined.**

- **a teleconference is information exchanged by any audio, video, (1990)**
- **or electronic medium, including the internet (2016).**



## SDCL 1-25-1

- Meeting may be held by teleconference;
- Hearing may be held by teleconference;
- Member is deemed present if the member answers present to the roll call;
- Each vote during a meeting held by teleconference shall be taken by roll call.



SDCL 1-25-1

**For a meeting held by teleconference, the Board must provide at least 1 place where public may listen to and participate in the teleconference meeting.**



## SDCL 1-25-1

If the meeting is held by teleconference and has *less than a quorum* of board members participating while present at the location open to the public, arrangements must be provided for the public to listen to the meeting via telephone or internet (*except when in executive session*).





IT IS PERMISSIBLE TO HAVE  
AN EXECUTIVE SESSION BY  
TELECONFERENCE !!



FOR EXECUTIVE SESSIONS  
VIA TELECONFERENCE, HAVE  
PHONE CONNECTION MADE  
PRIOR TO MOTION TO GO  
INTO EXECUTIVE SESSION.



SDCL 1-25-1

**It is not an official Board meeting IF –**  
**- its members provide information or attend the official meeting of another political subdivision for which the SDCL 1-25-1.1 notice has been given.**



## SDCL 1-25-1

- A violation of SDCL 1-25-1 is a Class 2 misdemeanor, punishable by up to a \$500 fine and/or 30 days in jail,  
  
**OR**
- could result in a public reprimand from the Open Meetings Commission (OMC).



The School Board must  
give notice of meeting,  
with proposed agenda, ...



## SDCL 1-25-1.1

The notice of meeting and proposed agenda must be visible, readable, and accessible for at least an *entire, continuous 24 hours immediately preceding the meeting, ...*



## SDCL 1-25-1.1

by posting a copy of the notice, visible to the public, at the principal (main administrative) office of the school.



SDCL 1-25-1.1

The notice of meeting must include the date, time, and location of the meeting.





# SDCL 1-25-1.1

## Special or rescheduled meetings:

- Deliver the information in the notice in person, by mail, by email, or by telephone, to members of the local news media who have requested notice;
- Comply with the public notice provisions of SDCL 1-25-1.1. for a regular meeting to the extent **that circumstances permit.**



SDCL 1-25-1.1

**A violation of SDCL 1-25-1.1  
is a Class 2 Misdemeanor.**



## Town of Herrick, OMC 05-01

Town Board “**clearly violated the requirement of the Open Meeting laws**” by failing to provide public notice of special meeting. “Nothing more than an agenda with executive session with personnel matters indicated as the purpose for the session needed to be posted. If official action was expected, the agenda could reflect that possibility.” (*Emphasis added*).



## **Town of Herrick, OMC 05-01**

**“The Board’s stated reason for not given the required notice, to protect the employee from embarrassment, was disingenuous since the minutes of the special meeting detailed the decision that was made and the options that were offered to the employee.”**



SDCL 1-25-1.1

*DOES YOUR  
SCHOOL  
HAVE A WEBSITE  
???*



## SDCL 1-25-1.1

If the school has a website, the notice of meeting and proposed agenda must be posted on the school's website when posted at the school.



SDCL 1-25-1.1

OMC REPRIMANDED A  
SCHOOL DISTRICT (2015) AND  
A COUNTY (2016) FOR  
FAILING TO POST THE NOTICE  
OF MEETING AND PROPOSED  
AGENDA ON ITS WEBSITE !!!!



DO YOU NEED A  
NOTICE OF MEETING  
AND PROPOSED  
AGENDA ???





## SDCL 1-25-1

- official meeting =
- in person or teleconference meeting of a quorum of board
- school board/district business discussed or decided, or public policy is formulated



## NEED NOTICE AND PROPOSED AGENDA ???

### **Kingsbury County Commission , OMC 08-02**

- **Complaint filed by a County Commissioner, alleging three Kingsbury County Commissioners met and participated in a meeting without posting an agenda. The three Commissioners said they met solely in order to get information from the County Auditor on how revenue was received by Kingsbury County.**



*VIOLATION ???*



NEED NOTICE AND  
PROPOSED AGENDA ???

## **Anne Hajek, Jeff Barth & Carol Twedt, OMC 07-04**

- Minnehaha County Commissioners Hajek, Twedt, and Barth had informal meeting with the Sioux Empire Fair Association's Executive Director. No notice of meeting posted.



*VIOLATION ???*



NEED NOTICE AND  
PROPOSED AGENDA ???

## **Roberts County Commission OMC 06-02**

- Three members of the Roberts County Commission met with officials of the Sisseton-Wapheton Oyate at the Dakota Sioux Casino at the invitation of the Sisseton-Wapheton Oyate. No agenda was posted.



The Commissioners were unaware of the nature of the meeting until they went to the Dakota Sioux Casino, except that it would involve a tour of the Casino. At the meeting the tribal officials asked the Commissioners for an official endorsement supporting the expansion of gaming at the Dakota Sioux.



After listening to the tribal officials, the County Commissioners told the tribal officials that the matter would need to be put on the agenda for the next Roberts County Commission meeting which was scheduled for the next day.





*A VIOLATION ???*



NEED NOTICE AND  
PROPOSED AGENDA ???

## City of Watertown, OMC 07-02

- The Watertown Public Opinion filed the Complaint, alleging that the City Finance Committee conducted a meeting without providing any notice to the public or posting any agenda. No notice of meeting or proposed agenda was posted.



***VIOLATION ???***



## NEED NOTICE AND PROPOSED AGENDA ???

### **Deadwood City Commission, OMC 2015-03**

- 2.17.15, City Commission approved request from Days of '76 Committee; on 8.17.15, same request from the Committee again appeared on the agenda; Commission denied the request.
- 8.18.15, Mayor calls two Commissioners; each contacted separately; all agreed the 8.17.15 vote was duplicative.



***VIOLATION ???***



# POSTING NOTICE OF MEETING

## **Brown County, OMC 07-03**

- The County Auditor had prepared the agenda and had published notice of the meeting in the official newspaper. The notice of meeting and agenda were not posted at the courthouse.



*VIOLATION ???*



# AGENDA TIPS

PROPOSED AGENDA

*(posted)*

as compared to the

FINAL AGENDA

*(approved by the Board)*





## PROPOSED AGENDA - FINAL AGENDA

### **Leola School District, OMC 13-02**

- The Complaint alleged that the Leola School Board violated the open meeting law by adding a new agenda item to a meeting without having given 24 hours' notice.



*VIOLATION ???*



OMC ruled that the School Board did not violate the open meeting law in light of a recent state court decision that held that the 24 hour notice provision applied only to proposed agendas, not to final agendas.



## AMENDING THE AGENDA

- AFTER POSTING PROPOSED AGENDA, BEFORE MEETING ?
- WHEN AGENDA APPROVED/ AMENDED AT BOARD MEETING ?
- AFTER AGENDA APPROVED ??



## Butte Co. Commission, OMC 08-04

- A meeting agenda was posted; person was interviewed and hired.
- Agenda items: "Executive Session regarding Personnel" and "conducting interviews..."
- Complaint alleged agenda not sufficient as it did not include the actual hiring decision.



*VIOLATION ???*



Butte Co. Commission,  
OMC 08-04

*“There is no requirement in SDCL 1-25-1.1 that the agenda is to indicate whether the listed items are for discussion only or whether the items require a vote at the meeting.”*



Butte Co. Commission,  
OMC 08-04

*“The reason for requiring the posting of an agenda is to apprise the public of the time, place, and nature of the meetings.”*





Butte Co. Commission,  
OMC 08-04

*“The agenda must contain sufficient information to advise the public as to each of the issues that will be addressed.”*



Butte Co. Commission,  
OMC 08-04

*“An agenda item stating that interviews would be conducted affords the public with sufficient information to conclude that a hiring decision may be conducted at the meeting.”*



## Lawrence County Commission, OMC 05-07

- Agenda item was " 'Vouchers, Travel Requests, Pending Matters, General Business.'"
- County Commission dissolved the Fire Advisory Board and terminated the Bear Ridge Volunteer Fire Dept.



*VIOLATION ???*



Lawrence County Commission,  
OMC 05-07

***“Anyone in the general public who had been following these matters closely could have learned that issues concerning the Fire Advisory Board would be addressed at this meeting without much difficulty.”***



## Lawrence County Commission, OMC 05-07

***“[I]n reaching our decision, it is important to note that the circumstances presented here do not evidence that the County Commission attempted to mislead the public or circumvent actual compliance with the law by acting on these matters under the heading of ‘Vouchers, Travel Requests, Pending Matters, General Business....”***



## Lawrence County Commission, OMC 05-07

***“While the Lawrence County Commission's proposed agenda for the April 26 meeting certainly could have been more specific, the law does not require that agendas meet the highest possible level of specificity.” The law simply requires that public notice be provided through a proposed agenda twenty-four hours in advance of any meeting of a public body. SDCL 1-25-1.1.”***

*(Emphasis added).*



# PROPOSED AGENDA

*SHOULD THIS BE ON A PROPOSED  
AND/OR FINAL AGENDA ???*

1. "OTHER BUSINESS"
2. "OLD BUSINESS"
3. "BOARD DISCUSSION"
4. "EXECUTIVE SESSION (IF  
NEEDED)"





# SDCL 1-27-1.16

Printed material relating to an agenda item prepared or distributed by or at the direction of the governing body

(1) must be made available at the official business office of the governing body at least twenty-four hours prior,

*OR . . .*



SDCL 1-27-1.16

(2) posted on website,

*OR*

(3) at least one copy of the printed material must be available in the meeting room, whichever is later.

*Violation is a Class 2 Misdemeanor*



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