



The Law Related to

EXECUTIVE SESSIONS

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SDCL 1-25-1

- official meetings are open to the public



SDCL 1-25-1

- official meeting =
- meeting of a quorum of board +
- 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

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



SPECIFIC LAWS ARE :

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

AND

SDCL 19-13-3(1)



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

- a public reprimand from the Open Meetings Commission (OMC).



Executive Session

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



Executive Session

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



SDCL 1-25-2

SDCL 1-25-2:

Executive or closed meetings may be held for the sole purposes of: ...



SDCL 1-25-2(1)

(1) Discussing the qualifications, competence, performance, character or fitness of any public officer **or** employee **or** prospective public officer **or** employee.



SDCL 1-25-2(1)

“The term ‘employee’
does not include any
independent contractor;”



SDCL 1-25-2(2)

(2) Discussing the expulsion, suspension, discipline, assignment of or the educational program of a student or the eligibility of a student to participate in interscholastic activities provided by the SD High School Activities Association;



SDCL 1-25-2(3)

(3) Consulting with legal counsel or reviewing communications from legal counsel about proposed or pending litigation or contractual matters;



SDCL 1-25-2(3)

2 REASONS IN SDCL 1-25-2(3) FOR GOING INTO EXECUTIVE SESSION:

(1) To consult with legal counsel or reviewing communications from legal counsel about proposed or pending litigation ;



SDCL 1-25-2(3)

(2) To consult with legal counsel or reviewing communications from legal counsel about *contractual matters*.



SDCL 1-25-2(3)

SDCL 1-25-2(3) -- "expresses one exception to the open meeting principle and that exception is for consultations with legal counsel, which consultations may relate to litigation matters or to contractual matters...."



SDCL 1-25-2(3)

... if there is a general exception for contractual matters, it would, in our view, largely gut the open meeting law of any extensive application because a very large portion of what is discussed and decided by most public bodies, on a routine basis, could be classified as a 'contract matter.'"



SDCL 1-25-2(3)

“Such an exception would be, as the cliché goes, a hole in the law that you could drive a truck through. Or perhaps a school bus.” (Emphasis added).



SDCL 1-25-2(3)

“General discussions of contractual matters must be discussed in open meetings. Only the legal matters relating to those contracts may be discussed in executive session. That may require going in and out of executive sessions numerous times during the course of a particular discussion.”



SDCL 19-13-3(1)

“A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client: (1) Between himself or his representative and his lawyer or his lawyer's representative;”



SDCL 1-25-2(4)

(4) Preparing for contract negotiations or negotiating with employees or employee representatives;



SDCL 1-25-2(5)

(5) Discussing marketing or pricing strategies by a board or commission of a business owned by the state or any of its political subdivisions, when public discussion may be harmful to the competitive position of the business.



Executive Session

OMC HAS HELD DEPARTMENT REORGANIZATION, RECEIVING A TASK FORCE RECOMMENDATION AND SCHOOL REORGANIZATION ARE NOT PERMITTED EXECUTIVE SESSION TOPICS !!



Executive Session

DISCUSSION IN EXECUTIVE SESSION IS LIMITED TO THE PURPOSE STATED IN THE MOTION FOR GOING INTO EXECUTIVE SESSION.



OMC stated “with regards the motion requirements of SDCL 1-25-2 they appear to be plain, simple and easy to comply with. There is no need to consider substantial compliance when the requirements of the statute are clear and actual compliance is easily within the capacity of any public body.”



SDCL 1-25-2

ANY AND ALL OFFICIAL
ACTION ON A MATTER
DISCUSSED IN EXECUTIVE
SESSION MUST BE MADE IN
OPEN SESSION.



Executive Session

“The signing of a communication by a Board, as a Board, on Town letterhead strongly suggests official action did occur in the executive session.”



Executive Session

"The council had a duty to exit executive session and make a motion authorizing the finance office to discuss this matter with the attorney and do whatever the attorney recommends."



Executive Session

Sioux Falls City Ethics Board met in executive session and took a vote during an executive session to dismiss an ethics complaint. OMC issues a reprimand.



Executive Session

OMC reprimanded the SF City Council for violating SDCL 1-25-2 after it made a motion *in open session* concerning a personnel matter that had been discussed in executive session because the motion did not fully disclose the subject matter of the action being taken.



Executive Session

After an executive session, if there is no formal decision (motion, 2nd and vote) the school board is not required to say in open session there is no official action to be taken after the executive session.



SDCL 1-25-2

CANNOT MAKE A MOTION IN
EXECUTIVE SESSION TO EXIT
EXECUTIVE SESSION !!!

*(No vote is required to come out of
executive session-President/Chair
declares out of executive session.)*



AGENDA

AGENDA ITEM...Executive session...

- for personnel matter
- for student matter
- for contract matter
- for legal matter
- for negotiations



motion mistakes

- *“Motion to go into executive session for personnel matter.”*
- *“Motion to go into executive session at 7:30 p.m. to discuss personnel in accordance to SDCL 1-26-1 & 2.”*
- *“Moved by ***, seconded by *** and carried to enter into Executive Session to conduct student hearing.”*



motion mistakes

- *“Motion to enter into executive session for the purpose of contractual matters.”*
- *“Motion by ***, second by ***, to move to executive session for Negotiations.”*



Executive Session

REMEMBER M & M !!

- **MOTION** must include statutory basis for executive session !
- **MINUTES** must include the statutory basis for executive session !



AGENDA

Executive Session for ...

- personnel matter, SDCL 1-25-2(1)
- student matter, SDCL 1-25-2(2)
- contract matter, SDCL 1-25-2(3)
- legal matter, SDCL 1-25-2(3); 19-13-3(1)
- negotiations, SDCL 1-25-2(4)



Executive Session

CAN COMBINE IN 1 MOTION
DIFFERENT REASONS FOR GOING
INTO EXEC SESSION, i.e., *"MOTION TO
GO INTO EXECUTIVE SESSION
PURSUANT TO SDCL 1-25-2(1),
PERSONNEL, AND SDCL 1-25-2(2),
STUDENT MATTER."*



Executive Session

THE CONFIDENTIALITY OF
WHAT IS DISCUSSED IN
EXECUTIVE SESSION MUST
BE MAINTAINED !!



Executive Session

WHO

- CAN BE

- SHOULD BE

- MUST BE

IN EXEC SESSION ???



Executive Session

??????? WHAT ABOUT

- RECORDING EXEC SESSION
- TAKING MINUTES IN EXEC SESSION
- INDIVIDUAL/ PERSONAL NOTES



Executive Session

??????s