DO’s AND DON’Ts
OF EXECUTIVE SESSION
(It is the Law!)

Gerry Kaufman, ASBSD Director of Policy & Legal Services, and Randall Royer, ASBSD Leadership Development Director
“The official meetings of the state, its political subdivisions, and any public body of the state or its political subdivisions are open to the public unless a specific law is cited by the state, the political subdivision, or the public body to close the official meeting to the public.”
All public bodies shall provide public notice, with proposed agenda, that is visible, readable, and accessible for at least an entire, continuous twenty-four hours immediately preceding any meeting, by posting a copy of the notice, visible to the public, at the principal office of the public body holding the meeting.

(emphasis added - 2015 amendment)
The proposed agenda shall include the date, time, and location of the meeting. The notice shall also be posted on the public body's website upon dissemination of the notice, if such a website exists.
DOES YOUR SCHOOL HAVE A WEBSITE ???
“The notice shall also be posted on the public body's website upon dissemination of the notice, if such a website exists.”
OMC REPRIMANDED A SCHOOL DISTRICT LAST FALL FOR FAILING TO POST THE PROPOSED AGENDA ON ITS WEBSITE !!!!!
DO YOU THINK THIS SHOULD BE ON A PROPOSED AGENDA ???

“EXECUTIVE SESSION (IF NEEDED)”
HOW ABOUT . . .

** Executive Session for Personnel matters.

OR

** Executive Session for Personnel matters, SDCL 1-25-2(1).
“The official meetings of the state, its political subdivisions, and any public body of the state or its political subdivisions are open to the public unless a specific law is cited by the state, the political subdivision, or the public body to close the official meeting to the public.”
SDCL 1-25-2. Executive or closed meetings--Purposes--Authorization--Violation as misdemeanor. **Executive or closed meetings may be held for the sole purposes of:** …
(1) Discussing the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee. The term "employee" does not include any independent contractor;
Motion mistakes

- “Motion by ***, second by *** to go into executive session at 7:30 p.m. to discuss personnel in accordance to SDCL 1-26-1 & 2.”
- “Moved ***, seconded by *** and carried to enter into executive session at ** for personnel.”
motion mistakes

• “Motion by ***, seconded by *** to enter executive session to discuss personnel & staff negotiations.”

• “Motion to adjourn the meeting into executive session according to SDCL 1-25-2(1) for a personnel matter.”
SDCL 1-25-2(1) proper motions

• “motion to go into executive session pursuant to SDCL 1-25-2(1) for personnel matter”

OR

• “motion to go into executive session for personnel matter pursuant to SDCL 1-25-2(1)”
(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 South Dakota High School Activities Association;
• “Moved by ***, seconded by *** and carried to enter into Executive Session to conduct student hearing.”

• “Motion by *** and seconded by *** to go back into executive session at *** for a student matter.”
SDCL 1-25-2(2) proper motions

• “motion to go into executive session pursuant to SDCL 1-25-2(2) for student matter”

OR

• “motion to go into executive session for student matter pursuant to SDCL 1-25-2(2)”
(3) Consulting with legal counsel or reviewing communications from legal counsel about proposed or pending litigation or contractual matters;
Executive Session – 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;
Executive Session –
SDCL 1-25-2(3)

(2) To consult with legal counsel or reviewing communications from legal counsel about contractual matters.
Executive Session –
SDCL 1-25-2(3)

**CONTRACT MATTERS IS NOT A STAND-ALONE PERMISSIBLE REASON FOR GOING INTO EXECUTIVE SESSION !!!!**
SDCL 1-25-2(3) motion mistakes

- “Motion to enter into executive session for the purpose of contractual matters.”
- “Motion by ***, second by *** to enter into executive session for legal matters per SDCL 1-25-2.”
SDCL 1-25-2(3)
proper motion

“motion to go into executive session pursuant to SDCL 1-25-2(3) to consult with legal counsel [or review communications from legal counsel] about proposed [or pending] litigation [or contractual matters].
Executive Session – SDCL 1-25-2(4)

(4) Preparing for contract negotiations or negotiating with employees or employee representatives;
“Motion by ***, second by ***, to move to executive session for Negotiations.”

“Motion by ***, seconeded by *** to move into executive session to discuss personnel, superintendent evaluation and negotiations.”
SDCL 1-25-2(4) proper motions

• “motion to go into executive session pursuant to SDCL 1-25-2(4) for negotiations”

OR

• “motion to go into executive session for negotiations pursuant to SDCL 1-25-2(4)”
Executive Session – 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.
A MOTION, SECOND AND MAJORITY VOTE IS REQUIRED TO GO INTO EXECUTIVE SESSION, and

THE SPECIFIC STATUTE AUTHORIZING THE EXECUTIVE SESSION MUST BE REFERENCED IN THE MOTION

Executive Session
SDCL 1-25-2
IT IS PERMISSIBLE TO COMBINE IN ONE 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.”
IS IT PERMISSIBLE TO HAVE AN EXECUTIVE SESSION BY TELECONFERENCE??

YES
FOR EXECUTIVE SESSIONS VIA TELECONFERENCE, HAVE PHONE CONNECTION MADE PRIOR TO MOTION TO GO INTO EXECUTIVE SESSION.
DISCUSSION IN EXECUTIVE SESSION IS LIMITED TO THE PURPOSE STATED IN THE MOTION FOR GOING INTO EXECUTIVE SESSION.
THE CONFIDENTIALITY OF WHAT IS DISCUSSED IN EXECUTIVE SESSION MUST BE MAINTAINED !!
WHAT ABOUT RECORDING EXECUTIVE SESSION, OR MINUTES OF WHAT TRANSPRIRED IN EXECUTIVE SESSION, OR INDIVIDUAL/PERSNAL NOTES ???
OFFICIAL ACTION ON A MATTER DISCUSSED IN EXECUTIVE SESSION MUST BE MADE IN OPEN SESSION.
Executive Session
SDCL 1-25-2

• CANNOT MAKE A MOTION IN EXECUTIVE SESSION TO EXIT EXECUTIVE SESSION AND RETURN TO OPEN SESSION.

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

**REMEMBER M & M !!**

- **MOTION** [must include specific statutory basis for executive session]
- **MINUTES** [need to include the statutory basis for executive session]
ASBSD/SASD Annual Convention

??endencies

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