



ASBSD/SASD Annual Convention

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*



SDCL 1-25-1

“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 1-25-1.1

. . . 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)



SDCL 1-25-1.1

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.



SDCL 1-25-1.1

*DOES YOUR
SCHOOL
HAVE A WEBSITE
???*



SDCL 1-25-1.1

“The notice **shall** also be posted on the public body's website upon dissemination of the notice, if such a website exists.”



SDCL 1-25-1.1

OMC REPRIMANDED A
SCHOOL DISTRICT LAST
FALL FOR FAILING TO POST
THE PROPOSED AGENDA
ON ITS WEBSITE !!!!



PROPOSED AGENDA

DO YOU THINK THIS SHOULD BE
ON A PROPOSED AGENDA ???

“EXECUTIVE SESSION (IF NEEDED)”



PROPOSED AGENDA

HOW ABOUT . . .

** Executive Session for Personnel matters.

OR

** Executive Session for Personnel matters, SDCL 1-25-2(1).



SDCL 1-25-1

“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.”



Executive Session – SDCL 1-25-2

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: ...



Executive Session – 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. The term "employee" does not include any independent contractor;



SDCL 1-25-2(1) 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."



SDCL 1-25-2(1) 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)”



Executive Session – 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 South Dakota High School Activities Association;



SDCL 1-25-2(2) motion mistakes

- “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)”



Executive Session – SDCL 1-25-2(3)

(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;



SDCL 1-25-2(4) motion mistakes

- “Motion by ***, second by ***, to move to executive session for Negotiations.”
- “Motion by ***, seconded 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.



Executive Session SDCL 1-25-2

- 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."



Executive Session SDCL 1-25-2

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

YES



Executive Session SDCL 1-25-2

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



Executive Session SDCL 1-25-2

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



Executive Session SDCL 1-25-2

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



Executive Session SDCL 1-25-2

WHAT ABOUT RECORDING
EXECUTIVE SESSION, OR
MINUTES OF WHAT
TRANSPIRED IN EXECUTIVE
SESSION, OR INDIVIDUAL/
PERSONAL NOTES ???



Executive Session SDCL 1-25-2

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]*



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