

**SOUTH DAKOTA'S**

**OPEN MEETINGS LAWS**

**AND**

**PRACTICAL TIPS**

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## Disclaimer

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**IF SOMEONE WANTS TO THROW  
A ROCK AT YOU,  
AND/OR AT THE BOARD,  
AND/OR AT THE DISTRICT,  
PLEASE DON'T GIVE THEM THE ROCK  
BY VIOLATING  
THE OPEN MEETINGS LAWS !!!!**

**TO FOLLOW THE OPEN MEETINGS  
LAWS IS MORE THAN A SUGGESTION  
OR RECOMMENDATION ---**

**IT IS A LEGAL REQUIREMENT !!**

**AND VIOLATIONS ARE  
CLASS 2 MISDEMEANORS.**

**WHO AT THE DISTRICT LEVEL IS  
RESPONSIBLE FOR THE BOARD'S  
COMPLIANCE WITH THE OPEN  
MEETING LAWS ??**

- **ULTIMATELY, THE SCHOOL BOARD AND EVERY INDIVIDUAL BOARD MEMBER;**
- **SECONDARILY, ALL EMPLOYEES, ESPECIALLY THE SUPERINTENDENT AND THE BUSINESS MANAGER.**

## **OMC 2024-09 City of Lead City Commission**

- “...public bodies do maintain authority and control over their staff.”**
- “The public body is responsible for training their staff concerning the state open meetings laws, and responsible for establishing procedures that comply with the open meetings laws.**
- “Public bodies should ensure that their staff do not attempt to engage a quorum of the public body in a discussion of official business or public policy outside of an official meeting.”**

## **SDCL 1-25-1**

**Official meetings are open to the public ...**

**SDCL 1-25-12(1). “Official Meeting” defined:**

- **any meeting of a majority of Board members**
- **at which official business or public policy of the School District/Board**
- **is discussed or decided by the Board,**

SDCL 1-25-12(1). **"Official meeting"** -- a meeting by the majority of the board at which official business or public policy is discussed or decided.

**\*\* whether in person or by means of teleconference or electronic means, including electronic mail, instant messaging, social media, text message, or virtual meeting platform,**

**\*\* the term does not include communications solely to schedule a meeting or confirm attendance availability for a future meeting.**



**"Teleconference," an exchange of information by any audio, video, or electronic medium, including the internet.**

- **Any official meeting, including a board hearing, may be conducted by teleconference.**
- **A board member is deemed present if the member answers present call when determining a quorum.**
- **Each vote at a teleconference meeting may be by voice vote; if any member votes no, the vote shall proceed to a roll call vote.**

**SDCL 1-25-1.5; SDCL 1-25-12(4)**

# **PRACTICAL TIPS**

**“UNOFFICIAL (AND ILLEGAL)  
BOARD MEETINGS” happen  
when school business  
is discussed or decided .....**

**1. BY A MAJORITY OF BOARD MEMBERS, WHEN NOT IN AN OFFICIAL MEETING, ARE AT THE SAME LOCATION, DISCUSSING SCHOOL BUSINESS OR MAKING A DECISION ON A SCHOOL MATTER.**

**Examples: Kingsbury County [OMC 08-02];  
Minnehaha County [OMC 07-04]**

**2. WHEN A MAJORITY OF BOARD MEMBERS DISCUSS A SPECIFIC SCHOOL BUSINESS TOPIC AMONG THEMSELVES, AT DIFFERENT TIMES, AND THEN, WITHOUT THERE BEING AN OFFICIAL BOARD MEETING, THERE IS A MAJORITY DECISION WHICH RESULTS IN SOME TYPE OF SCHOOL DISTRICT ACTION.**

**Example: Deadwood City Commission [OMC 15-03]**

## **“UNOFFICIAL (and illegal) BOARD MEETINGS”**

**3. WHEN THERE IS A PHONE CONFERENCE BY A MAJORITY OF BOARD MEMBERS, OUTSIDE A BOARD MEETING, AND SCHOOL BUSINESS IS DISCUSSED AND/OR DECIDED, OR WHEN ONE BOARD MEMBER CALLS OTHER BOARD MEMBERS AND SAME MATTER DISCUSSED AND A DECISION REACHED OUTSIDE OF A BOARD MEETING.**

**Example: No cases directly on point, but in one case, OMC said it was permissible for the Board President to call other Board members informing them of the decision by the President on a certain matter. [OMC 14-04]**

## **“UNOFFICIAL (and illegal) BOARD MEETINGS”**

**4. WHEN A BOARD MEMBER (OR SOMEONE WHO IS NOT A BOARD MEMBER) EMAILS A MAJORITY, OR ALL, OF THE BOARD MEMBERS ON A SCHOOL MATTER ( OR POSTS SOMETHING ON SOCIAL MEDIA) AND A MAJORITY OF BOARD MEMBERS RESPOND (VIA EMAIL, IN PERSON, OR ON SOCIAL MEDIA, ETC.).**

**Examples:**

- Canton City Commission [OMC 17-04]**
- Lead City Commission [OMC 2024-09]**

**SDCL 1-25-1. It is not an official meeting IF ....**

- **It is not an official meeting of one public body if its members provide information or attend the official meeting of another public body for which the notice requirements of § 1-25-1.1 has been met.” EXAMPLE. PRACTICAL TIP – DON’T RELY ON ANOTHER ENTITY TO POST THE AGENDA – DO YOUR OWN !!**
- **“It is not an official meeting of a public body if its members attend a press conference called by a representative of the public body.”**

## **SDCL 1-25-1. It is not an official meeting IF ....**

- **It is not an official meeting of a public body “for any event hosted by a nongovernmental entity to which a quorum of the public body is invited and public policy may be discussed, but the public body does not control the agenda, the political subdivision may post a public notice of a quorum, in lieu of an agenda. The notice of a quorum shall meet the posting requirements of § 1-25-1.1 and shall contain, at a minimum, the date, time, and location of the event.”**

**EXAMPLE**

# OMC and the NONGOVERNMENTAL ENTITY EVENT PROVISION IN SDCL 1-25

## Lincoln County Commissions [OMC 2024-04]

- NuGen Energy, LLC, hosted an invitation only event to provide information why NuGen Energy had partnered with Summit Carbon Solutions. All 5 County Commissioners received an invitation, and 3 showed up.
- No Agenda or Notice of Quorum posted.
- Commission's defenses – didn't know public policy would be discussed and didn't know majority of Commissioner's would attend.



## Lincoln County Commissions [OMC 2024-04]

- “SDCL 1-25-1 authorizes the use of the notice of quorum when ‘public policy may be discussed.’ (Emphasis original). The statute does not require certainty that substantive discussions of public policy will occur.”
- SDCL “imposes an implied responsibility” on the public body to determine if a majority of its members have been invited to the event and will attend the event.
- Lincoln County Commission reprimanded by OMC.

**SDCL 1-25-1. “Official meetings  
are open to the public ...**

**...UNLESS A SPECIFIC LAW IS CITED by the  
state or the political subdivision to close  
the official meeting to the public.”**

**[Emphasis added]**

## ***SPECIFIC LAWS WHICH AUTHORIZE EXECUTIVE/CLOSED SESSIONS***

- **SDCL 1-25-2 (1)**
- **SDCL 1-25-2 (2)**
- **SDCL 1-25-2 (3) >> *[SDCL 19-19-502]***
- **SDCL 1-25-2 (4)**
- **SDCL 1-25-2 (5)**
- **SDCL 1-25-2 (6)**

**MORE ON SDCL 1-25-2 IN A FEW MINUTES...**

## ***SD Attorney General Open Meetings Brochure***

**“Motions for executive sessions must refer to the specific state or federal law allowing for the executive session i.e. ‘pursuant to SDCL 1-25-2(3).’ Also, best practice to avoid public confusion would be that public bodies explain the reason for going into executive session.”**

**(Emphasis added).**

## **OMC = SD Open Meetings Commission**

- OMC reprimanded Groton City Council after the Council went into executive session without a motion, second and vote. (16-01)**
- OMC reprimanded the Bennett County Commission for failing to have a second to the motion to go into executive session before going into executive session. (2024-02)**
- OMC reprimanded the Sturgis City Council after the motion to go into executive session failed to state the purpose (authorizing law) for the executive session. (2024-08)**

# **EXECUTIVE SESSION MOTIONS –PRACTICAL TIPS**

- “so move” – NO
- “motion to go into executive session” -- NO
- “motion to go into executive session for personnel/student matter/consult with legal counsel” -- NO
- “motion to go into executive session pursuant to SDCL 1-25-2” -- NO
- “motion to go into executive session pursuant to SDCL 1-25-2(1)” etc. -- YES
- “motion to go into executive session pursuant to SDCL 1-25-2(1), personnel / (2) student matter/ etc. -- YES

## SDCL 1-25-1 > ***PRACTICAL TIPS***

- STATE THE SPECIFIC LAW AUTHORIZING THE EXECUTIVE SESSION IN THE MOTION TO GO INTO EXECUTIVE SESSION,
- THERE MUST BE A SECOND TO THE MOTION,
- THERE MUST BE A VOTE TO GO INTO EXECUTIVE SESSION
- AND IT **MUST BE** REFLECTED IN THE MINUTES !!

**\*\*\*\* OMC HAS REPRIMANDED GOVERNING BOARDS FOR GOING INTO EXECUTIVE SESSION WITHOUT THE PROPER MOTION, AND/OR SECOND, AND/OR VOTE. [OMC 16-01; 2024-02]**

**SDCL 1-25-2**

**EXPLANATIONS OF - AND  
PRACTICAL TIPS - RELATED TO  
THE DIFFERENT STATUTORY  
REASONS THE SCHOOL BOARD  
MAY GO INTO EXECUTIVE SESSION**

.....



**SDCL 1-25-2 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, employee or prospective public officer or employee; DOES NOT include independent contractor;**
- Individual specific;**
- current or potential employee; current Board member or potential appointee;**
- Not to be used for interviewing, choosing or discussing performance of an independent contractor.**

## **Executive Session - SDCL 1-25-2(1)**

### **OMC Decisions:**

- **Executive session cannot be used to discuss reorganizing city departments. *City of Lead (04-01)***
- **It was permissible for the school board to go into executive session to discuss the qualifications and competency of school district personnel during staff reduction discussions. *Hot Springs School Board (18-02)***

## **Executive Session - SDCL 1-25-2(1)**

**“The plain language of SDCL 1-25-2(1) limits application of that section to the discussion in executive session of the ‘qualifications, competence, performance, character or fitness’ of an employee. Discussion of wages or compensation is conspicuously absent from the statutory language....SDCL 1-25-2(1) does not allow for discussion of an employee’s compensation in executive session.” (Emphasis added).**

## **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;**

- must be individual student specific;**
- not to be used to discuss policy, such as a bullying, discipline, Title IX sexual harassment, or transgender policy.**

## **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;**

- Direct school attorney involvement is required, through presence in executive session, in person or by phone/zoom, etc., or from/through attorney written communications, or Superintendent/Board member meeting/conference notes.**

**SDCL 1-25-2(3) Consulting with legal counsel or reviewing legal counsel communications about proposed/pending litigation/contractual matters;**

**“Discussion of contracts is not, by itself, a proper basis for executive session.”**

**“If there is a general exception for contractual matters, it would gut the open meetings law 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.”**

**“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.”**

*SD Science & Technology Authority (2.20.07)*

**SDCL 1-25-2(3) Consulting with legal counsel or reviewing legal counsel communications about contractual matters;**

***PRACTICAL TIPS –***

- ***Executive Session cannot be for the purpose of discussing whether or not the Board should enter into a contract.***
- ***There must be direct attorney involvement, in person, by phone, or review of attorney written communication, AND***
- ***the attorney involvement is related to the legal rights and responsibilities of the parties with respect to the contract.***

# **SDCL 1-25-2(3) Consulting with legal counsel or reviewing communications from legal counsel about proposed or pending litigation**

## **OMC Decision: *City of Mitchell* (08-01)**

- **“The commission in *Melrose* also held that attorney-client privilege is a permissible use of the executive session....”**
- **“ To hold otherwise ‘The end result would be that every entity or person except a public board could exercise the attorney-client privilege.’”**



**SDCL 1-25-2(3) Consulting with legal counsel or reviewing communications from legal counsel about proposed or pending litigation**

**OMC Decision: 08-01 City of Mitchell:** The phrase “legal issues” encompasses SDCL 1-25-2(3) and SDCL 19-13-3 (the Lawyer-Client privilege). [SDCL 19-13-3 is now SDCL 19-19-502]

**PRACTICAL TIP AND RECOMMENDATION:**

**Consider citing SDCL 19-19-502 in addition to SDCL 1-25-2(3) when going into executive session to discuss “legal issues” and talk with/review communications from the school attorney.\***

## Executive Session - SDCL 1-25-2(4)

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

---- “The Commission finds, however, that this exception [SDCL 1-25-2(4)] applies only to employee relations and not to other general contractual matters.” (Emphasis added). *OMC Decision: SD Science & Technology Authority (2.20.07)*

***PRACTICAL TIP – USE SDCL 1-25-2(4) AND SDCL 1-25-2(1) WHEN ADDRESSING THE SUPERINTENDENT’S SALARY.***

## **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;**

**– Applicability to schools ??**

- Contracted bus service ?**
- Contracted food service ?**

**PRACTICAL TIP - Discuss with your school attorney.**

## **Executive Session - SDCL 1-25-2(6)**

**(6) Discussing information pertaining to the protection of public or private property and any person on or within public or private property specific to:**

***(a) Any vulnerability assessment or response plan intended to prevent or mitigate criminal acts;***

***(b) Emergency management or response;***

***(c) Public safety information that would create a substantial likelihood of endangering public safety or property, if disclosed;***

***(d) Cyber security plans, computer, communications network schema, passwords, or user identification names;***

***(e) Guard schedules;***

## **Executive Session - SDCL 1-25-2(6)**

***(f) Lock combinations;***

***(g) Any blueprint, building plan, or infrastructure record regarding any building or facility that would expose or create vulnerability through disclosure of the location, configuration, or security of critical systems of the building or facility; and***

***(h) Any emergency or disaster response plans or protocols, safety or security audits or reviews, or lists of emergency or disaster response personnel or material; any location or listing of weapons or ammunition; nuclear, chemical, or biological agents; or other military or law enforcement equipment or personnel.***

## **Executive Session - SDCL 1-25-2**

**Discussion during the executive session is limited to the purpose stated in the motion to go into executive session. [Again, SDCL 1-25-1 requires a specific law to be cited in the motion to go into executive session.]**

- OMC reprimanded a School Board after the Board, while in executive session for a permissible reason (personnel), strayed onto another topic which was not a permissible executive session topic.**

## **Executive Session - SDCL 1-25-2**

**All official action concerning the matters held in executive session must be made in open session.**

- *Sioux Falls Ethics Board (OMC 10-03)* - OMC reprimanded the Ethics Board for making a decision in executive session.**
- *City of Sioux Falls ( OMC 12-01)* - OMC reprimanded the City of Sioux Falls for passing a motion concerning a personnel matter that had been discussed in executive session when the motion did not fully disclose the subject matter of the action being taken.**

## Executive Session - SDCL 1-25-2

### *PRACTICAL TIPS:*

- It is okay for the Board to reach a consensus while in executive decision, but it cannot be a final decision (or implemented) as final decisions can only occur in open session.
- The burden is on each Board Member (and Administrators who are in the executive session) to ensure the Board does not stray “off-topic” when in executive session.
- **DO NOT** vote to come out of executive session; the Board President/Chair simply declares the Board out of executive session.



**SDCL 1-25-1. The Board must reserve at every official meeting a period for public comment, limited at the Board's discretion as to the time allowed for each topic and the total time allowed for public comment, but not so limited as to provide for no public comment.**

- **Exception to public comment requirement:**  
Public comment is not required at meetings held only for purposes of having an executive session, i.e., student expulsion hearings, employee grievance hearings, contract nonrenewal/ termination hearings.
- **PRACTICAL TIP – the Hearing must be the only item on the agenda when the agenda is approved at the beginning of the board meeting. DO NOT ADD ANYTHING TO IT !!!**

**When should the “public comment” time be on the agenda?**

**Options:**

**Before agenda approval?**

**After agenda approval?**

**At end of meeting?**

**PRACTICAL TIP : DEPENDS ON THE BOARD'S AGENDA POLICY, HOWEVER, .....**

# **PUBLIC COMMENT POLIICY**

**Do you have one ?? If yes, does your District policy address:**

- when is the public comment period on the agenda?**
- prior notification/sign up (name and topic)?**
- length of time for public comments (total/ individual speaker time, time extensions)?**
- Notification of policy (on agenda/link)?**

**\*\*ASBSD Sample Policy**

# **PRACTICAL TIP**

## **KEEP IN MIND SDCL 22-18-35(3)**

**“Any person who intentionally causes serious public inconvenience, annoyance, or alarm to any other person, or creates a risk thereof by disturbing any lawful assembly or meeting of persons without lawful authority, is guilty of disorderly conduct, a Class 2 misdemeanor.**

**NOTICE OF MEETING  
AND  
AGENDA**

## **SDCL 1-25-1.1**

**The Board must provide public notice of meeting, with proposed agenda,**

- that is visible, readable, and accessible**
- for at least an entire, continuous 24 hours immediately preceding any official meeting**
- must include the date, time, and specific location of the meeting.**

## **SDCL 1-25-1.1**

- **The notice of meeting and proposed agenda must be posted at the principal office of District**

***AND***

- **must be posted on the District's website.**

# **Notice of Meetings – violations**

## **OMC Decisions**

- **\*Minnehaha County**
- **\*Kingsburg County**
- **\*Deadwood City Commission**
- **\*Canton City Commission**
- **Potter County Commission [18-01]**
- **Bennett County Commission [2021-02]**
- **AND the OMC has multiple times reprimanded political subdivisions for failing to post their meeting notice and agenda on their website.**



## **SDCL 1-25-1.1**

**“For any special or rescheduled meeting, the information in the notice shall be delivered in person, by mail, by email, or by telephone, to members of the local news media who have requested notice.....the Board must also comply with the public notice provisions of this section for a regular meeting to the extent that circumstances permit.”**

**WHAT SHOULD THE BOARD DO IF IT IS  
DISCOVERED BEFORE THE MEETING THAT  
THE NOTICE OF MEETING AND AGENDA  
WERE NOT POSTED AT THE SCHOOL  
AND/OR ON THE SCHOOL'S WEBSITE ??**

**PRACTICAL TIP**

**RESCHEDULE TO THE MEETING TO BE HELD  
AS SOON AS POSSIBLE, MAKING SURE THE  
24 HOUR NOTICE REQUIREMENT IS MET,  
AND POST IT. ALSO LET THE PUBLIC KNOW  
AS SOON AS POSSIBLE OF THE MEETING  
BEING RESCHEDULED.**

# **AGENDA ISSUES**

- **Agenda specificity**
- **Proposed Agenda as compared to Final Agenda**

## **OMC and AGENDA SPECIFICITY**

- ***05-07 Lawrence County*** “the law does not require that agendas meet the highest possible level of specificity.”
- ***08-04 Butte County*** - “In particular, it should be noted that 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.... The failure to include the hiring decision as a specific agenda item is not a violation of SDCL 1-25-1.”

# **AGENDA SPECIFICITY**

## **MARTIN CITY COUNCIL [OMC 2024-01]**

- **“An agenda must be sufficient to generally advise the public of the time and place of an official meeting of a political subdivision, and advise the public of the nature of the items to be addressed at the meeting.”**
- **“The Commission has previously concluded that the agenda ‘must include a bare identification of the matters to be discussed by the public body.’”**

# **AGENDA SPECIFICITY**

## **MARTIN CITY COUNCIL [OMC 2024-01]**

- **“While not required by statute, best practice concerning the level of detail to include on an agenda would be to include sufficient information to put the public on notice of the specific items planned to be discussed at a particular meeting.”**
- **PRACTICAL TIP :**  
**FOLLOW OMC’S “BEST PRACTICE.”**

# **AGENDA PRACTICAL TIPS**

## **DO NOT USE AGENDA ITEMS SUCH AS --**

- “old business” and “new business” without identifying the specific business to be discussed
- “executive session (if needed)”
- “Board Discussion”
- AND -- DO NOT identify an item as being a “discussion item” or “action item.”

# **Proposed Agenda as compared to Final Agenda:**

## **SD Attorney General Open Meetings Brochure**

**“Typically the public body adopts the final agenda upon convening the meeting. At this time, the governing body may add or delete agenda items and may also change the order of business. In 2012, the South Dakota Supreme Court affirmed a South Dakota Circuit Court decision which held that a preliminary agenda may be amended when the board takes action to formally adopt the meeting agenda.”**



# **Proposed Agenda as compared to Final Agenda:**

## ***SD Attorney General Open Meetings Brochure***

- **“It is recognized that public bodies may add items to their agendas at the time the agenda is finalized.”**
- **“There is nothing in state law that precludes taking action on those items at the same meeting where they are added to the agenda.”**
- **“However, it is recommended that unless emergency action is needed on an item, a public body put off until its next meeting action on items added to a proposed agenda at the time the agenda is finalized.”**

# Proposed Agenda -- Final Agenda:

## **PRACTICAL TIPS**

- **DO NOT** use the right to amend the agenda at the time of agenda approval to circumvent the intent behind the requirement to post the proposed agenda. (example – adding an executive session, when the need for it was known before the agenda was posted). The more sensitive/controversial a topic is, the more caution which should be used before adding it to the agenda when the agenda is approved, and even more caution should be used, if added to the agenda, on taking action on the topic.

**Proposed Agenda -- Final Agenda:**  
***SD Attorney General Open Meetings Brochure***

**“New items cannot be added after the agenda has been adopted by the governing body.” [Emphasis added]**

**\*\*\* NEWS FLASH – OMC JUST REPRIMANDED A GOVERNING BOARD FOR TAKING ACTION AT A OFFICIAL MEETING ON A ITEM THAT WAS NOT ON THE AGENDA !!!! DUH !!!!!**

## **SDCL 1-25-11 --- Recording an open official meeting by the public or press.**

- **Any person may record (through audio or video technology) an official meeting which is open to the public,**
- **as long as the recording is reasonable, obvious, and not disruptive.**

## **PRACTICAL TIPS -**

- **Have a Policy [ASBSD Sample Policy]**
- **RECOMMENDATIONS [based on SD Supreme Court recording rules]**
  - **must inform the board president or supt. before the meeting;**
  - **inform people who are present of the meeting being recording;**
  - **equipment/artificial light which may be used;**
  - **obstructing vision and distracting;**
  - **right to prohibit/terminate recording if rules are violated.**

**LAST MINUTES RULES AND  
PRACTICAL TIPS RELATED TO  
CONDUCTING MEETINGS VIA  
TELECONFERENCE .....**

## **Teleconferences (SDCL 1-25-1.6). Public participation in teleconference meeting.**

- At a teleconference meeting, there must at least one place where the public may listen to and participate in the teleconference meeting.**
- If there is less than a majority of board members physically present at the meeting location, arrangements shall be provided for the public to listen to the meeting via telephone or internet.**
- The requirement to provide at least one place for the public to listen to the teleconference does not apply to executive sessions.**

# Teleconferences

**PRACTICAL TIPS** related to  
conducting an open meeting  
teleconference meeting, going into  
executive session, and then  
returning to the open meeting.



**IF MAJORITY OF BOARD MEMBERS ARE  
ON-SITE, ONE+ MEMBER CALL IN FOR THE  
EXECUTIVE SESSION:**

- Before making the motion to go into executive session, Board President/Chair informs the public the absent member(s) will be joining the meeting for purposes of the executive session, then call the absent board member(s);
- Motion, second and vote to go into executive session, and public leaves the meeting room.
- President/Chair declares out of executive session; public back in; absent member stays on the line until meeting reconvenes in open session, the disconnects.

# **IF MAJORITY OF BOARD MEMBERS ARE OFF-SITE:**

- **At beginning of meeting, inform the public as to the procedure to be followed for executive session and reconvening in open session.**
- **Use 2 conference call-in numbers & ID's; 1 for open meeting, 1 for executive session; post open session call-in # and ID in notice of meeting and proposed agenda.**
- **In open meeting, motion for executive session; members call 2<sup>nd</sup> conference call number; conduct executive session; declare out; recess; call 1<sup>st</sup> conference number to re-enter and reconvene open meeting with public present.**

**SOME LAWS IN THE AG'S BROCHURE ON THE  
OPEN MEETINGS LAWS (SDCL CH. 1-25) REFER  
TO THE PUBLIC RECORDS LAWS (SDCL CH. 1-27).**

## **SDCL 1-27-1.16.**

- **For every meeting that is open to the public, all printed material relating to an agenda item, prepared or distributed by or at the direction of the board or any employee, and distributed before the meeting to all board members, shall either be posted on the body's 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 the material is distributed to the governing body, whichever is later.**
- **If the material is not posted to the governing body's website, must be available in the meeting room for inspection by any person while the governing body is considering the printed material.**

## **SDCL 1-27-1.17 DRAFT MINUTES**

- The unapproved, draft minutes of any public meeting held pursuant to § 1-25-1 that are required to be kept by law shall be available for inspection by any person within ten business days after the meeting. However, this section does not apply 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.**

## **SDCL 1-27-1.18 Recommendations, findings, and reports of appointed working groups.**

**Any** final recommendations, findings, or reports that result from a meeting of a committee, subcommittee, task force, or other working group .... appointed by the governing body, **shall be reported in open meeting** to the governing body which appointed the committee, subcommittee, task force, or other working group. The governing body **shall delay taking any official action** on the recommendations, findings, or reports until the next meeting of the governing body.

## **RESOURCES -- AG BROCHURE AND OPEN MEETINGS COMMISSION**

- **AG Brochure: <https://atg.sd.gov/docs/July%202025OpenMeetingsLaw.pdf>**
- **OMC Summary of Decisions: [https://atg.sd.gov/docs/OMC%20summary%20of%20decisions.current%20 through%2012%2031%2020.pdf](https://atg.sd.gov/docs/OMC%20summary%20of%20decisions.current%20through%2012%2031%2020.pdf)**
- **OMC “No Merits” Abstracts: <https://atg.sd.gov/docs/OMC%20no%20merits%20filings%20abstr act.current%2001%2031%2021.pdf>**

# **CLOSING COMMENT #1**

## **CONSEQUENCES FOR FAILURE TO FOLLOW THE OPEN MEETINGS LAWS**

- **PUBLIC REPRIMAND FROM OPEN MEETINGS COMMISSION; AND/OR**
- **CLASS 2 MISDEMEANOR = UP TO 30 DAYS IN JAIL OR \$500 FINE, OR BOTH;  
AND/OR**
- **COURT INVALIDATES/VOIDS THE SCHOOL BOARD VOTE/ACTION**



## **CLOSING COMMENT # 2**

**OMC HAS HELD MULTIPLE TIMES**

**THERE IS NO “GOOD FAITH” OR**

**“INADVERTENT ERROR” EXCEPTION**

**TO THE OPEN MEETING LAW.**

# **CLOSING COMMENT # 3**

**IF SOMEONE WANTS TO THROW**

**A ROCK AT YOU, AND/OR AT**

**THE BOARD, AND/OR AT THE DISTRICT,**

**PLEASE DO NOT GIVE THEM THE ROCK**

**BY VIOLATING THE OPEN**

**MEETINGS LAWS !!**

# **QUESTIONS ??**

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