



RUNNING AN OFFICIAL MEETING IN SOUTH DAKOTA

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SOUTH DAKOTA ASSOCIATION OF COUNTY COMMISSIONERS

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“Public Body” defined

- SDCL 1-25-12(2): “any **political subdivision** and the state[.]”
- Political Subdivision: any association, authority, board, commission, committee, council, task force, school district, county, city, town, township, or other local government entity that is created or appointed by statute, ordinance or resolution **and** is vested with the authority to exercise any sovereign power derived from state law.

“Sovereign Power”

The ability to exercise government power

Examples:

Levy or Abate Taxes

Regulate Utility Rates

Zone Property

Issue conditional use permits

Authorize Expenditures

Issue liquor licenses

Budget public funds

Issue government contracts

Enact ordinances and resolutions

Examples of County Boards/Commissions exercising sovereign power:

County Commission

Planning and Zoning Board

Board of Adjustment

Task Force Created by Resolution
(if granted certain powers)


Weed Board



“Official meeting” defined

- SDCL 1-25-12(3): “any meeting of a quorum of a public body at which official business or public policy of that public body is **discussed or decided** by the public body, whether in person or by means of teleconference.”
- **Recent cases before SDOMC:**
- City of Canton: email authorization for a change order is an “official meeting”
- Potter County: quorum remains to discuss public business after adjournment is an “official meeting”


Notice Requirements

- Act requires public notice of the date, hour, place and **proposed** agenda of every official meeting—both open meetings and executive sessions.
 - Public notice must be visible for an “entire, **continuous**” twenty-four (24) hours prior to the meeting at the principal office of the public body; must be “visible,” “readable” and “accessible.” Usually post on outside door, with lighting for visibility.
 - Post on website at same time, if a website exists.
 - Provide notice to those who specifically request it, i.e. media.
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SDCL on County Commission Meetings

- SDCL 7-8-16 provides specific requirements for County Commission meetings:
- County Commissioners shall hold sessions as an open meeting and transact all business in a public manner. Meetings shall normally be held at the court house or at the usual place of holding court. County Commission may “occasionally” hold its sessions at other suitable places within the geographic county area if in a public place if notice of the meeting is published once a week for at least two successive weeks.
- Joint County/Municipal meetings may be held within the County.

Teleconference meetings

- Statute allows teleconference meetings—
“Teleconference” means by any audio, video, or electronic medium, including the internet.
 - Must provide one or more places for the public to listen and participate in the teleconference.
 - Public notice requirements still apply
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Materials relating to agenda items

Any material prepared by or at the direction of the governing body or its employees, and distributed prior to the public meeting must be posted on the 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 when the material is distributed, whichever is later.

If not posted to the website, then at least one copy of the printed material shall be available in the meeting room for inspection by any person while the governing body is considering the printed material.

Not applicable if material related to an executive session item or otherwise privileged, such as attorney-client communications.

Source: SDCL 1-27-1.16



Recommendations, findings and reports of appointed working groups

Any final recommendations, findings, or reports that result from a meeting of a working group which is not a political subdivision or a “public body” shall be reported in open meeting to the governing body which appointed the working group.

The governing body may not take official action on the recommendations, findings, or reports until the next meeting of the governing body.

Source: SDCL 1-27-1.18



Official Meeting Checklist:

found at

sdpaaonline.org

Under Resources—Open Meetings



Rules on running a meeting:

SDCL 6-1-19: Any public hearing or meeting conducted by an elected or appointed municipal, county, or township officer regarding any proposed ordinance, resolution, or regulation on any subject is legislative in nature and **may be conducted informally to the extent the officer deems necessary to secure public comment on matters of public interest. The formal rules of procedure and evidence do not apply to the conduct of the public hearing or meeting.** This provision does not abrogate any open meeting requirements in chapter 1-25.

Roberts Rules:

Robert's Rules often adopted as procedures for making motions, seconds, and votes on items under consideration.

Important that item under consideration is clear and that the required number of votes received to approve the item:

- Ordinance—takes three votes.
- Resolution/any other motions—majority of those present.

Robert's Rules: City of Madison, Wisconsin

<https://www.cityofmadison.com/attorney/documents/RobertsRulesGuide.pdf>

Quasi-judicial versus Legislative:

SDCL 1-32-1(10): ““Quasi-judicial function" means an adjudicatory function exercised by an agency, involving the exercise of judgment and discretion in making determinations in controversies. The term includes the **functions of interpreting, applying, and enforcing existing rules and laws; granting or denying privileges, rights, or benefits; issuing, suspending, or revoking licenses, permits and certificates**; determining rights and interests of adverse parties; evaluating and passing on facts; awarding compensation; fixing prices; ordering action or abatement of action; holding hearings; adopting procedural rules or performing any other act necessary to effect the performance of a quasi-judicial function[.]”

SD Supreme Court definition:

“Administrative action is **quasi-judicial** if it investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist rather than looking to the future and changing existing conditions by making a new rule, to be applied thereafter to all or some part of those subject to its power.”

Source: State of SD, Department of GFP v. Troy Township, Day County et al, 900 N.W.2d 840 at ¶ 21 (SD 2017)(quotations omitted)

Quasi-judicial items

SDCL 6-1-20: Any public hearing or meeting conducted by an elected or appointed municipal, county, or township officer regarding a quasi-judicial matter as defined in subdivision 1-32-1(10) may be conducted informally to secure the information required to make a decision. The formal rules of procedure and evidence do not apply to the conduct of the public hearing or meeting. **If an officer relies upon any evidence not produced at a public hearing or meeting, the officer shall disclose the evidence publicly and include the information in the public record to afford all parties an opportunity to respond or participate.** Failure to make this disclosure may be grounds for the municipal, county, or township officer's disqualification for that particular decision, pursuant to the grounds for disqualification pursuant to § 6-1-21.

Decision-maker sources of information


SDCL 6-1-18: An elected or appointed municipal, county, or township officer may receive and consider relevant information from any source to perform the duties of office. An elected or appointed municipal, county, or township officer may rely on his or her own experience and background on any official matters, subject to the applicable law and rule concerning recusal and disqualification of a public officer.

Quasi-judicial items--recusals

SDCL 6-1-21. Grounds for disqualification of officer in quasi-judicial proceeding. An elected or appointed municipal, county, or township officer may receive input from the public, directly or indirectly, about any matter of public interest. Such contact alone does not require the officer to recuse himself or herself from serving as a quasi-judicial officer in another capacity. **An elected or appointed officer is presumed to be objective and capable of making decisions fairly on the basis of the officer's circumstances and may rely on the officer's own general experience and background. Only by a showing of clear and convincing evidence that the officer's authority, statements, or actions regarding an issue or a party involved demonstrates prejudice or unacceptable risk of bias may an officer be deemed disqualified in a quasi-judicial proceeding.**

Executive Sessions

May only be held for authorized purposes, including:

- Discussing the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee. “Employee” does not include independent contractor;
 - Consulting with legal counsel or reviewing communications from legal counsel about proposed or pending litigation or contractual matters;
 - Preparing for contract negotiations or negotiating with employees or employee representatives.
 - Source: SDCL 1-25-2(1), (3) and (4)
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Executive Sessions--continued

- Motion, second and majority vote required to go into executive session. Motion should state the purpose and cite the statute
- Executive Session topic(s) limited to purpose(s) stated in the motion.
- **No official action may be taken during a closed meeting.**
- State Constitution or federal or state law may require or permit other purposes for closed session—i.e. to discuss a medical matter of a citizen; physician licensing

2019 SD Legislative Session:

SB 91—passed both houses unanimously, signed by Governor Noem


Nongovernmental entity sponsored events: quorum of public body attends, “may” post public notice of quorum in lieu of an agenda.

General Public Comment at Official meetings: required at **regularly** scheduled meetings, except inaugurations, swearing in ceremonies, or presentation of annual reports.

HB 1048—passed both houses, signed by Governor Noem

Executive Sessions: specifically allows discussion of security information; security audits/plans; emergency or disaster response plans

A Press Conference is not an “official meeting”



Final considerations

If a meeting must be continued to another day/time:

- Must provide notice to local news media and others who have requested notice.
- Must comply with regular meeting notice requirements to the extent the circumstances permit.
- Preferred method is to do another publicly noticed meeting, with at least 24-hours notice.

OMC has not rendered a direct opinion on emergency meetings where an argument would be made that the public body could not comply with the 24-hour notice requirement. Dicta would suggest that emergency situations would not be a violation—but cannot be certain.

SDCL 7-18A-9: effective date of resolutions and ordinances: twenty days unless “**necessary for the immediate preservation of the public peace, health, or safety, or support of the county government and its existing public institutions. . . .**”

Rezoning case in **Pennington County**: careful on any property rights implications! Statutory notice requirements give procedural due process rights.

More Final considerations

“Substantial” Amendments of a proposed Municipal Ordinance at second reading:

Defer final vote for five days. SDCL 9-19-7.1

“Substantial” means more than a clerical change/clarification.

Another local government entity issue prompted the statute, yet only found in municipal chapter of SDCL.

Could a Circuit Court hold that it violates due process if a County does not defer a vote following a substantial amendment?

HB 1218 in 2016 Session original proposal: “If the governing body of a municipality revises any ordinance, not including any form and style revisions, after the first reading, the governing body shall revert back to publishing notice for first reading.”

GOVERNMENT PRACTICES HOTLINE



QUESTIONS?

Thank you!

Disclaimer: while the presenter is an attorney, this presentation is for general information purposes only and should not be construed as providing legal advice or opinions for a specific situation. Attendees are encouraged to contact the attorney of their choice for any specific legal discussion and legal advice.

