



# Minding the Minefields: An Elected Officials Workshop

SDML Conference, Watertown, SD October 6, 2022

Presenters:

Tom Greco, City Clerk  
for City of Sioux Falls

Dave Pfeifle, SDPAA



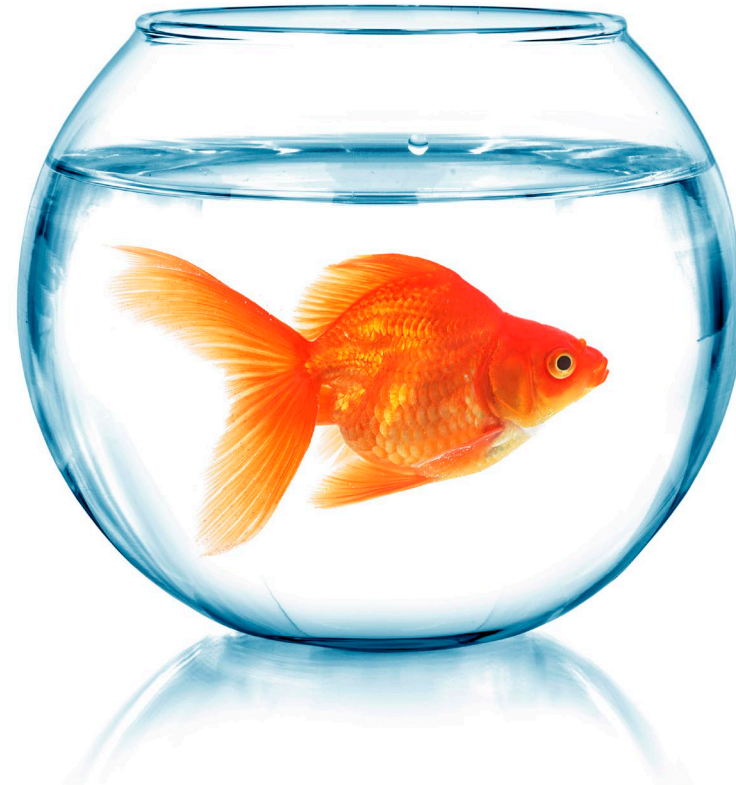


Photo: iStock/Rose Carson

# The Local Elected Official



Photo: iStock/Mikdam

# The Public



# The “Minefields” De Jure

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1. Local Elections--Campaign Finance

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2. Open Meetings

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3. Robert Rules of Order

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4. Conflicts of Interest

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5. Quasi-Judicial Quagmire

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6. Public Statements

# Campaign Finance

Elected Officials Workshop



# Topics

- Key Concepts & Terms
- Applicability to State Law
- Types of Political Committees
- How Campaign Finance Works
- Leveling the Playing Field – Other Components of Campaign Finance
- Considerations When Adopting Campaign Finance Requirements
- Recommended Practices

# Key Concepts & Terms

## **Campaign Finance Requirements Provide a Means for Identifying...**

- Who/What is raising money and for what
- Who/What is contributing
- How funds are spent

## **...Through the Formation & Reporting of a *Political Committee***

***Statement of Organization***...the document that answers “who/what is raising money and for what”

***Campaign Finance Disclosure Report***...the document that answers “who/what is contributing” and “how funds are spent”

***There are other forms, but focus on these 2 for now...***

# Applicability of Campaign Finance Laws to Municipalities (SDCL 12-27-39)

- Required in First Class Municipalities for **Ballot Questions**
- The **governing body of any** county, township, **municipality**, school district, or special purpose district not otherwise covered by this chapter **may adopt an ordinance or resolution to make the provisions of this chapter, with or without amendments, applicable to** county, township, **municipal**, school district, or special purpose district **elections**.

## CHAPTER 12-27 CAMPAIGN FINANCE REQUIREMENTS



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# Types of Political Committees

- **Candidate Campaign Committee**
- **Ballot Question Committee**
- **Political Action Committee**



- "Candidate campaign committee" is any committee organized by a **candidate** to receive contributions and make expenditures for the candidate.
- What's a **candidate**?
  - Any person who seeks nomination for election to public office. A person is a candidate if the person:
    - Raises, collects, or disburses contributions > \$500;
    - Has authorized the solicitation of contributions or the making of expenditures;
    - Has created a candidate campaign committee for the purpose of obtaining office;
    - Qualified for nomination for or election to public office.

*SDCL 12-27-1(3) & (4)*



# Types of Political Committees

- Candidate Campaign Committee
- **Ballot Question Committee**
- Political Action Committee



"Ballot question committee" is a person or entity that raises, collects, or disburses contributions:

- (a) As a **proponent** for the **placement** of one or more ballot questions on the ballot;
- (b) As an **opponent** to the **placement** of one or more ballot questions on the ballot; or
- (c) For the **adoption or defeat** of one or more ballot questions.

A ballot question committee is not a person or political committee that makes a contribution to a ballot question committee. A ballot question committee is not an entity that makes a contribution to a ballot question committee from treasury funds;

*SDCL 12-27-1(2)*

# Types of Political Committees

- Candidate Campaign Committee
- Ballot Question Committee
- **Political Action Committee**



"Political action committee" is any person or entity that **raises, collects or disburses contributions to influence the outcome of an election** and who is not a candidate, public officer holder, candidate campaign committee, ballot question committee, or a political party. A political action committee is not any:

- (a) Person who makes a contribution to a political committee; or
- (b) Entity that makes a contribution to a ballot question committee from treasury funds;

*SDCL 12-27-1(17)*

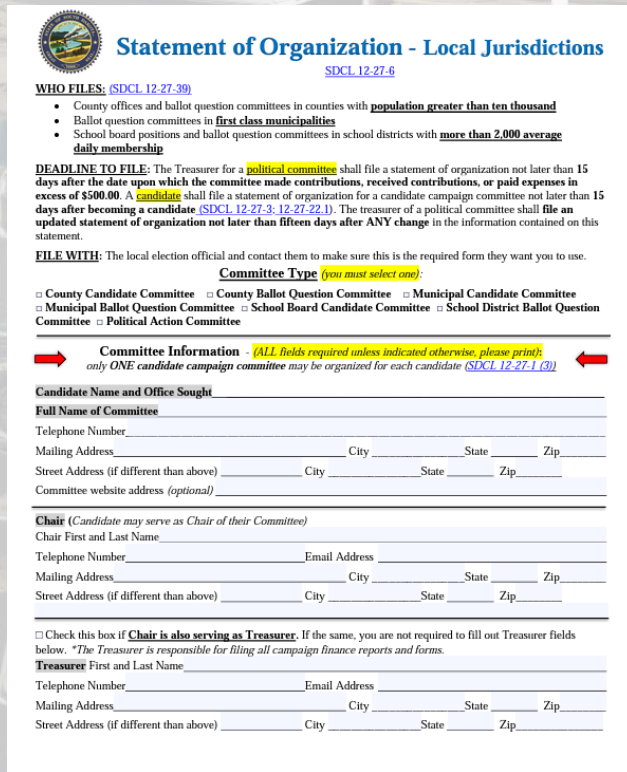
- Committee Type** (you must select one):
- County Candidate Committee
  - County Ballot Question Committee
  - Municipal Candidate Committee
  - Municipal Ballot Question Committee
  - School Board Candidate Committee
  - School District Ballot Question Committee
  - Political Action Committee



# How it Works...

Statement of Organization

Campaign Finance Disclosure Report



**Statement of Organization - Local Jurisdictions**  
SDCL 12-27-6

**WHO FILES:** (SDCL 12-27-39)

- County offices and ballot question committees in counties with **population greater than ten thousand**
- Ballot question committees in **first class municipalities**
- School board positions and ballot question committees in school districts with **more than 2,000 average daily membership**

**DEADLINE TO FILE:** The Treasurer for a **political committee** shall file a statement of organization not later than 15 days after the date upon which the committee made contributions, received contributions, or paid expenses in excess of \$500.00. A **candidate** shall file a statement of organization for a candidate campaign committee not later than 15 days after becoming a candidate (SDCL 12-27-3; 12-27-22.1). The treasurer of a political committee shall file an updated statement of organization not later than fifteen days after ANY change in the information contained on this statement.

**FILE WITH:** The local election official and contact them to make sure this is the required form they want you to use.

**Committee Type** (you must select one):

County Candidate Committee    County Ballot Question Committee    Municipal Candidate Committee  
 Municipal Ballot Question Committee    School Board Candidate Committee    School District Ballot Question Committee    Political Action Committee

**Committee Information** (ALL fields required unless indicated otherwise, please print); only ONE candidate campaign committee may be organized for each candidate (SDCL 12-27-1 (3))

**Candidate Name and Office Sought**

**Full Name of Committee**

Telephone Number \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Mailing Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Street Address (if different than above) \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Committee website address (optional) \_\_\_\_\_

**Chair** (Candidate may serve as Chair of their Committee)

Chair First and Last Name \_\_\_\_\_

Telephone Number \_\_\_\_\_ Email Address \_\_\_\_\_

Mailing Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Street Address (if different than above) \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Check this box if **Chair is also serving as Treasurer**. If the same, you are not required to fill out Treasurer fields below. \*The Treasurer is responsible for filing all campaign finance reports and forms.

**Treasurer** First and Last Name \_\_\_\_\_

Telephone Number \_\_\_\_\_ Email Address \_\_\_\_\_

Mailing Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

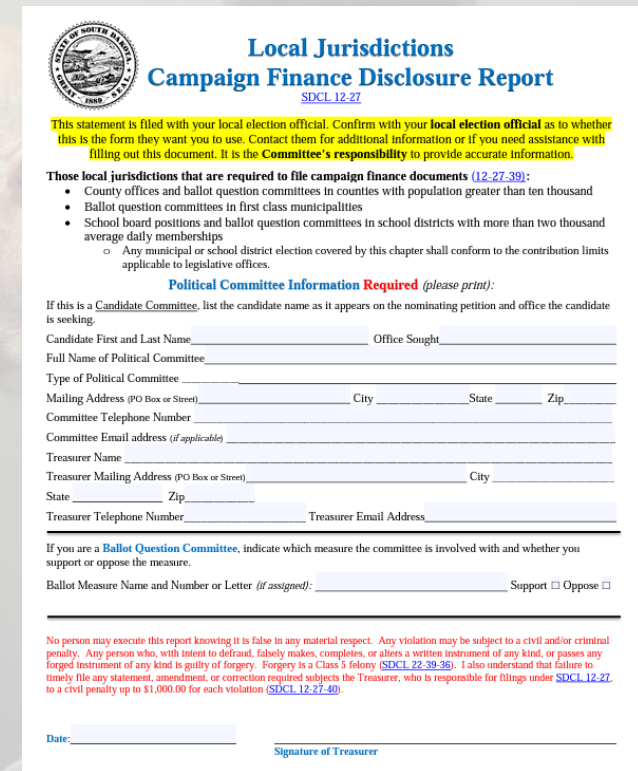
Street Address (if different than above) \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

← **Establish Committee**

**Track Contributors & Contributions by Type**

**Track Expenditures**

**Report** →



**Local Jurisdictions Campaign Finance Disclosure Report**  
SDCL 12-27

This statement is filed with your local election official. Confirm with your local election official as to whether this is the form they want you to use. Contact them for additional information or if you need assistance with filling out this document. It is the Committee's responsibility to provide accurate information.

**Those local jurisdictions that are required to file campaign finance documents (12-27-39):**

- County offices and ballot question committees in counties with population greater than ten thousand
- Ballot question committees in first class municipalities
- School board positions and ballot question committees in school districts with more than two thousand average daily memberships
  - Any municipal or school district election covered by this chapter shall conform to the contribution limits applicable to legislative offices.

**Political Committee Information Required** (please print):

If this is a Candidate Committee, list the candidate name as it appears on the nominating petition and office the candidate is seeking.

Candidate First and Last Name \_\_\_\_\_ Office Sought \_\_\_\_\_

Full Name of Political Committee \_\_\_\_\_

Type of Political Committee \_\_\_\_\_

Mailing Address (PO Box or Street) \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Committee Telephone Number \_\_\_\_\_

Committee Email address (if applicable) \_\_\_\_\_

Treasurer Name \_\_\_\_\_

Treasurer Mailing Address (PO Box or Street) \_\_\_\_\_ City \_\_\_\_\_

State \_\_\_\_\_ Zip \_\_\_\_\_

Treasurer Telephone Number \_\_\_\_\_ Treasurer Email Address \_\_\_\_\_

If you are a **Ballot Question Committee**, indicate which measure the committee is involved with and whether you support or oppose the measure.

Ballot Measure Name and Number or Letter (if assigned): \_\_\_\_\_ Support  Oppose

No person may execute this report knowing it is false in any material respect. Any violation may be subject to a civil and/or criminal penalty. Any person who, with intent to defraud, falsely makes, completes, or alters a written instrument of any kind, or passes any forged instrument of any kind is guilty of forgery. Forgery is a Class 5 felony (SDCL 22-39-36). I also understand that failure to timely file any statement, amendment, or correction required subjects the Treasurer, who is responsible for filings under SDCL 12-27, to a civil penalty up to \$1,000.00 for each violation (SDCL 12-27-49).

Date: \_\_\_\_\_ Signature of Treasurer \_\_\_\_\_

Who is raising/ spending & why...

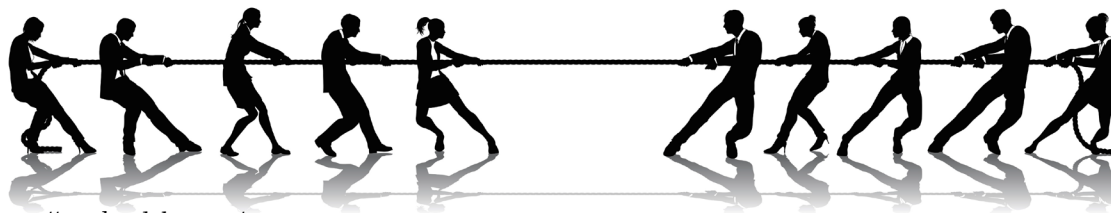
Who or what is contributing, how much, and how it's being spent by the Committee

# “Leveling the Playing Field”– Other Components of Campaign Finance

- No unknown contributors
- No “disguised” contributors
- Rules for “independent” communication expenditures
- Specified uses for contributions to candidate committees
- Accountability



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## **12-27-45. Additional standards adopted by political subdivision.**

Nothing in this chapter prevents any political subdivision from adopting additional standards or requirements relating to campaign finance for elections held under the political subdivision's own jurisdiction that are more stringent than the provisions of this title.

# Adopting Campaign Finance Requirements - Reporting

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**COUNTY SPECIAL elections and LOCAL JURISDICTION elections**  
*select one of these reports:*

- Pre-Election report:** fifteen days prior to the election, for the reporting period commencing with the last report submitted up through and including twenty days prior to the election date.
- Year-End report:** by the last Friday in January each year, for the reporting period commencing with the last report submitted up through and including December thirty-first of each year. If you terminate prior to December 31, you do not need to file a Year-End.
- Termination report:** filed whenever you choose. The reporting period is from the last report filed to the date you are terminating. The balance has to end in zero and you must report all expenditures and receipts and pay off all outstanding loans, debt and obligations since your last filed report.

You may also select one of the **reports below in combination** with a **report** above:

- Amendment** (*for most recent report filed*)
- Termination of Committee**

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*Adopt a reporting cycle that works for your municipality...*



# Adopting Campaign Finance Requirements – Contribution Limits

Contribution limits to a PAC from:	
Individual*	\$10,000
PAC**	Unlimited
Party***	Unlimited
Entity	\$10,000
Federal, Statewide, Legislative & County Candidate Committee	Unlimited
Ballot Question Committee	\$10,000

Contribution limits to a Legislative or County Candidate from:	
Individual*	\$1,000
PAC**	Unlimited
Party***	Unlimited
Entity	\$1,000
Federal, Statewide, Legislative & County Candidate Committee	Unlimited
Ballot Question Committee	Prohibited

Contribution limits to a Statewide Candidate from:	
Individual*	\$4,000
PAC**	Unlimited
Party***	Unlimited
Entity	\$4,000
Federal, Statewide, Legislative & County Candidate Committee	Unlimited
Ballot Question Committee	Prohibited

Contribution limits to a Political Party from:	
Individual*	\$10,000
PAC**	Unlimited
Party***	Unlimited
Entity	\$10,000
Federal, Statewide, Legislative & County Candidate Committee	Unlimited
Ballot Question Committee	Prohibited

Contribution limits to a Ballot Question from:	
Individual*	Unlimited
PAC**	Unlimited
Party***	Unlimited
Entity	Unlimited
Federal, Statewide, Legislative & County Candidate Committee	Unlimited
Ballot Question Committee	Unlimited



# Best Practices

- Make requirements clear
  - What forms to use
  - When to submit
  - Where to submit
  - What to submit
  - Keep It Simple...
- Enforce penalties
- Make submissions available online
- Answer questions smartly...

Example  
Sioux Falls Code of Ordinances  
Sec. 38.001

The provisions of the general election laws and administrative rules promulgated thereto of the State of South Dakota shall apply to all municipal elections unless specifically provided by city charter or city ordinance.

The provisions of state law on campaign finance applicable to state legislative office shall also apply to all elected municipal positions.

The city clerk shall conduct all municipal elections provided by this chapter and by city charter.

Any statement, form, or filing required by the general election laws of the state of South Dakota applicable to municipal elections shall be submitted to the city clerk's office.

# For More Information

- SDCL Chapter 12-27
- SD Secretary of State
- Sioux Falls City Clerk ([tgrec@siouxfalls.org](mailto:tgrec@siouxfalls.org) or 605-367-8081)

# Open Meetings

Elected Officials Workshop



# Official Meeting Notice Requirements

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- 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 a “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.



# Does the SD Open Meetings Act apply?

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<b>Attend</b>	A Regional/National workshop with other members of your public body
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<b>Attend</b>	A social function, along with a majority of the public body
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<b>Attend</b>	Upon invitation, body attends a meeting of another public body
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<b>Change Order</b>	Change order authorization request via separate emails to each elected official. (SDCL 1-25-1 requires quorum where official business is “discussed or decided”)
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<b>Circulate</b>	Circulate an invoice or a letter for signature outside of a meeting
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# “Teleconference” meetings

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Statute allows teleconference meetings—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

# SD Open Meetings Commission

A public body member  
or staff member sending  
a communication to a  
quorum of a public body  
is a “teleconference”  
under the statute.

Send to each separately



Photo: iStock/sabathai

# MEETING CHECKLIST TEMPLATE

DATE OF MEETING: \_\_\_\_\_

## SETTING UP THE MEETING:

\_\_\_\_\_ Set a meeting schedule for the entire year; or schedule the next meeting in open discussion at the end of your last public meeting; or

\_\_\_\_\_ Contact each Public Body (Body) member **separately** via phone or email to obtain the most acceptable date. Once all separate responses from members are received, phone or e-mail each of the members separately with confirmation of the meeting date/time/location. **Do not send an email to a quorum of the body for any reason.**

## NOTICE OF MEETING/AGENDA and any ATTACHMENTS:

\_\_\_\_\_ Prepare the Agenda. Obtain Chair approval\_\_\_\_\_. The Agenda must include the date, time, and location of the meeting.





# MEETING CHECKLIST (CONTINUED)

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\_\_\_\_\_ Prepare/compile any attachments for the Agenda, which should include draft minutes from the last meeting and any items/documents to be given to all the members in advance of the meeting.

\_\_\_\_\_ Send Agenda/attachments to Body members **separately**.

\_\_\_\_\_ If any attachments are provided to all members in advance of the meeting, then those documents must be simultaneously available for public inspection at the Body's principal office.

\_\_\_\_\_ Documents provided in advance should also be simultaneously posted on the Body's website, if any, at least 24-hours in advance of the meeting or at the time those documents were provided to all members, whichever is later.



# MEETING CHECKLIST (CONTINUED)

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\_\_\_\_\_ If the documents provided to all members in advance are not posted on the Body's website, if any, then the documents must be available for inspection during the meeting itself. It is a good practice to announce at the meeting that one paper copy of the materials is available for inspection either at the start of the meeting or when the documents are provided to the members (if distributed at that time). The minutes should also reflect that this announcement was made. Only confidential documents related to an executive session matter specifically authorized by statute, or any attorney-client privileged documents, may be withheld from the documents that must be publicly available.

\_\_\_\_\_ Post the Agenda at the principal office of the Body at least 24 hours in advance of the meeting. The posting must be for an entire and continuous 24-hour period before the meeting. A preferred and standard method is to post the Agenda inside an entry doorway window to the Body's principal office which is illuminated by an outside light at night.

\_\_\_\_\_ Post Agenda simultaneously on the Body's website, if any, at least 24 hours in advance of the meeting. At least 24 hours before the meeting, the person compiling this checklist should confirm that the web postings are up without any technical difficulties.

\_\_\_\_\_ Provide Agenda to any media members or other individuals who have requested advance notice of the meeting.



# Most common Executive Sessions:

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## Personnel

Discuss 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;

## Legal Counsel

Consult with legal counsel or reviewing communications from legal counsel about **proposed or pending litigation or contractual matters**;


## Contract Negotiations

Prepare for contract negotiations or negotiating with employees or employee representatives.

# Executive Sessions—Procedure:

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Motion, second and majority vote required to go into executive session. Motion should state purpose and cite the statute



Executive Session topic(s) limited to purpose(s) stated.



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 matter that could reveal the individually identifiable health information of a citizen



# Executive Sessions—Proper?

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Public body discusses a vendor contract without their attorney advising?

Public body discusses a potential economic development project with the local Economic Development Corporation?

Public body discusses a potential zoning ordinance without their attorney advising?

Public body discusses performance of a specific employee?

## 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

# Draft Minutes of a Public Meeting

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Shall be available for inspection within **ten business days** after the meeting.

Exception 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.

# Recommendations, findings & reports of appointed working groups-- SDCL 1-27-1.18

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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.

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

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# A Trap for the unwary

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A quorum of the governing body stays after meeting adjourned and discusses city business.



Should disperse after meeting adjourned.



SD Open Meetings Commission decision against Potter County. OMC 2018-01

# Regarding Zoning Ordinances:

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Joffer et al v. Turner Co., Turner Co. Civ. No. 15-18 (9/29/15)

Planning Commission holds hearing and recommends County Commission approve Proposed Revisions to Zoning Ordinances.

County Commission during Second Reading first discloses certain amendments then adopts as amended.

County then issues CUP per amended Ordinances, neighbors allege statutory due process violations, Circuit Court agrees.

# 2016 SD Legislative Session:

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Adopts SDCL 9-19-7.1 (2016):

“If any amendment presented and approved by the governing body at the second reading of an ordinance **substantially alters the substance of the ordinance from the first reading**, the proposed ordinance as amended may not be considered for final adoption until at least five days after a duly noticed public meeting of the governing body pursuant to chapter 1-25.”

Compare: SDCL 6-1-19 (adoption of ordinance is a “legislative” act)

The ONLY CURRENT AUTHORIZED EDITION of the  
CLASSIC WORK on PARLIAMENTARY PROCEDURE

ROBERT'S  
RULES  
OF ORDER

NEWLY REVISED



12TH EDITION

Henry M. Robert III,  
Daniel H. Honemann, Thomas J. Balch,  
Daniel E. Seabold, and Shmuel Gerber

# Robert's Rules of Order

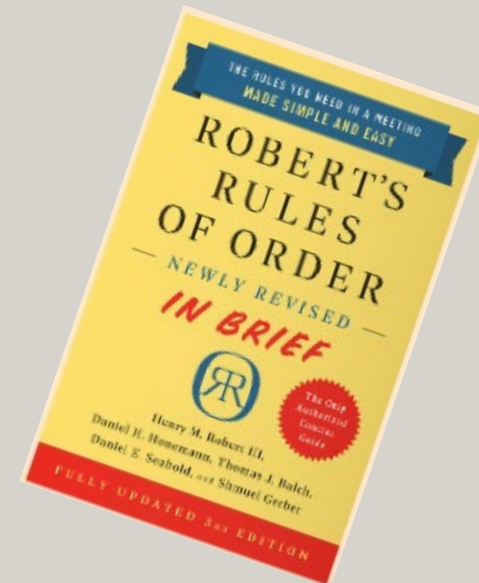
Elected Officials Workshop





# Topics

- The Purpose of Robert's Rules of Order  
*(Rules of Order, Newly Revised-RONR)*
- How RONR “Works” In Relation to Statutes, Ordinances, By-Laws, etc...
- The Basics
- Handling Business



The rules are based on a regard for the rights:

- Of the majority;
- Of the minority, especially a strong minority—greater than one-third;
- Of individual members;
- Of absentees, and;
- Of all these together. (RONR p. xlix)

There is also an implicit understanding that **all members of the body are entitled to an effectively-run meeting** that efficiently carries out its stated objectives. In the case of public bodies, it can be rightly noted this extends to the public's expectations as well.

***ALL MEMBERS HAVE EQUAL RIGHTS,  
PRIVILEGES, AND OBLIGATIONS***

# How RONR “Works”

- Most organizations have a need for adopted rules of procedure;
- Once adopted...some rules are more difficult to change than others;
  - Law, Ordinance, and/or Resolution
  - Parliamentary Law
  - Robert’s Rules
  - Policies & Procedures
  - Standing Rules
  - Custom
- There are virtually no limitations to what rules can be adopted, but...
  - National, State, and Local Laws always take precedence;
- ...So, understanding your “rules landscape” is critical!







# The Basics

- **Order of Business**
  - Sequence in which certain general types or classes of business are brought up or permitted to be introduced;
- **Notice**
  - Agendas: Proposed agenda required by SDCL 1-25-1
  - A major, underlying principle of RONR is *notice*
- **Quorum**—Typically a majority of the membership, but may be changed;
- **Level of Formality**– Dictated in large part by custom;
- **Role of the Chair, or Presiding Officer**—Observes and enforces the rules of the body in an impartial manner;
- **Role of the Body**-- Observes and ensures enforcement of the rules.

# Handling Business

The proper use of the motions outlined in Robert's Rules is perhaps the most confusing and intimidating aspect of the book. However, understanding some fundamental principles of parliamentary law aides in using and managing them:

- Only one question can be considered at a time;
- Once a motion is before the assembly, it must be adopted or rejected by a vote, **OR**;



- The body must take action disposing of the question in some other way, before any other business can be introduced. (RONR §4)

Postpone  
Refer



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Amend



Kill



Caution:  
Amendments



# Handling Business

*Must also provide for:*

- *Reading*
- *Public Hearings*
- *Quasi-Judicial Matters*

*How you handle motions depends a lot on the agenda item*

Bringing a motion before the assembly (RONR §4)	<b>MOTION (Main Motion- Member)</b> <b>I move to... (usually “adopt” or “approve”)</b>
	<b>MOTION SECOND (Member)</b> <b>Second, [NAME]</b>
	<b>STATE THE QUESTION (Chair)</b> <b>Motion by ____, second by ____ to ...</b>
Considering a motion (RONR §4)	<b>DEBATE (Members) (<u>AMENDMENTS &amp; OTHER MOTIONS</u>)</b>
	<b>PUT THE QUESTION (Chair)</b> <b>Hearing no further debate, a roll call vote, please</b> <b>OR</b> <b>Hearing no further debate, all those in favor say</b> <b>“yes” ...those opposed say “no” OR</b> <b>Is there any objection to...</b>
	<b>VOTE (Members)</b> <b>“Yes” or “No”</b>
	<b>ANNOUNCE VOTE (Chair)</b> <b>The motion has PASSED/FAILED ____ to ____.</b>



# Introducing Business

**MAIN MOTION:** Starts the process of discussion and decision-making; no magic involved...

*I move that ...* [describe the action—approve, recommend approval, etc]

**SECOND:** Does not signify support or opposition; just that it should be considered

*Second* (does not require recognition by the chair)

**RESTATE THE QUESTION** (Chair): This places the question before the board and is “the pending question” (at least initially)

*Motion by Board Member X, Second by Board Member Y, to [describe the motion]*

**IMPORTANT:** Once the Chair “states the question” the motion becomes the property of the body. Beforehand, though, the maker may make modifications or withdraw the motion altogether. This helps to avoid confusing motions. Generally, the Chair would seek clarification before “stating the question.”



# Considering Business – Debate

**DEBATE:** The Chair opens the floor to debate. During debate:

- Keep comments germane
- Manage as rules dictate
- Generally, one person has the floor at a time – typically start with maker of motion
- Debate the MERITS of the question AT HAND.

*I now ask if there is any debate on the motion.*

During debate, members may introduce SECONDARY\* MOTIONS

- Most often this is where members may seek to improve a MAIN MOTION by offering an AMENDMENT.
- But there are several SECONDARY MOTIONS that may be considered.

\* Subsidiary, Privileged, Incidental

## Parliamentary Motions - Quick Reference Thirteen Ranking Motions

**Privileged Motions** relate to the rights or privileges of the organization or individual members rather than to particular items of business. They are of such urgency that they are entitled to immediate consideration

**Subsidiary Motions** may be applied to another motion for the purpose of modifying it, delaying action on it, handling its consideration, or disposing of it.

**Main Motions** are the basis of all parliamentary procedure, bring business before the assembly for consideration and action. They can be introduced only when no other business is pending.

Make →

Vote →

Name of Motion	May interrupt when another is speaking	Requires a second	Is debatable	Is amendable	Vote required for adoption	May be reconsidered
<b>FIX THE TIME TO WHICH TO ADJOURN</b>	No	Yes	No	Yes	M	Yes
<b>ADJOURN</b>	No	Yes	No	No	M	No
<b>RECESS</b>	No	Yes	No	Yes	M	No
<b>RAISE A QUESTION OF PRIVILEGE</b>	Yes	No	No	No	C	No
<b>CALL FOR THE ORDERS OF THE DAY</b>	Yes	No	No	No	C	No
<b>LAY ON THE TABLE</b>	No	Yes	No	No	M	Neg. Only
<b>PREVIOUS QUESTION (aka CALL THE QUESTION)</b>	No	Yes	No	No	2/3	Yes
<b>LIMIT OR EXTEND LIMITS OF DEBATE</b>	No	Yes	No	Yes	2/3	Yes
<b>POSTPONE TO A CERTAIN TIME</b>	No	Yes	Yes	Yes	M	Yes
<b>REFER TO A COMMITTEE</b>	No	Yes	Yes	Yes	M	Yes
<b>AMEND</b>	No	Yes	Yes*	Yes	M	Yes
<b>POSTPONE INDEFINITELY</b>	No	Yes	Yes	No	M	Aff. Only
<b>MAIN MOTION</b>	No	Yes	Yes	Yes	4(M)	Yes

\*Is debatable if applied to a debatable motion

M Majority

C Chair Handles

The privileged and subsidiary motions have precedence in the order listed, from highest to lowest, when a main motion is pending. Several of the privileged and subsidiary motions may also be made when no business is pending, in which case they are main motions. The unqualified motion to adjourn is generally privileged whether or not a main motion is pending. See RONR.

*Adapted from RONR*

## Parliamentary Motions - Quick Reference Incidental and "Bring Back" Motions

**Incidental Motions** are made in response to a variety of situations that may arise during the consideration of a pending question. They must be resolved before business can continue. They have no rank. Listed below are those that are used most often

**Motions That Bring Back A Question Again Before the Assembly**, sometimes called **Restorative** or "**Bring Back**" **Motions**, return a question to the assembly for further consideration and action. Listed below are those that are most often used.

	Name of Motion	May interrupt when another is speaking	Requires a second	Is debatable	Is amendable	Vote required for adoption	May be reconsidered
<b>--INCIDENTAL--</b>	POINT OF ORDER	Yes	No	No	No	C	No
	APPEAL FROM A DECISION OF THE CHAIR	Yes	Yes	Yes**	No	M-	Yes
	SUSPEND THE RULES	No	Yes	No	No	2/3	No
	OBJECTION TO CONSIDERATION OF A QUESTION	±	No	No	No	2/3-	Neg. Only
	DIVISION OF A QUESTION	No	Yes	No	Yes	M-	No
	DIVISION OF THE ASSEMBLY	Yes	No	No	No	C	No
	PARLIAMENTARY INQUIRY - Requests Parliamentary Advice	Yes	No	No	No	C	No
	POINT OF INFORMATION - Requests Factual Advice	Yes	No	No	No	C	No
<b>BRING BACK</b>	TAKE FROM THE TABLE	No	Yes	No	No	M-	No
	RESCIND/AMEND SOMETHING PREVIOUSLY ADOPTED	No	Yes	Yes**	Yes	2/3/M	Neg. Only
	RECONSIDER	±	Yes	Yes**	No	M-	No

± Is in order if another has been assigned the floor but has not begun to speak

\* Is debatable if applied to a debatable motion

\*\* Is usually debatable, see RONR

M- Majority in the negative is required to reverse the decision of the chair

2/3- 2/3 in the negative is required to sustain the objection

2/3/M 2/3 or majority of membership without notice or majority with notice

M Majority

C Chair Handles

# Considering Business – Voting

**PUT THE QUESTION:** The Chair asks for a vote. RONR provides for several different voting methods—**Voice; Rising; Roll Call; Unanimous Consent.**

The example below is for a roll call vote:

*A roll call vote on the question / motion to [describe].*

*Secretary, read the roll.* The recording secretary reads the roll and all members, unless excused, answer **Yes** or **No**.

**ANNOUNCE THE RESULT:** The Chair announces the result of the vote. Any member may change their vote up to this point.

*The motion to [describe motion] passed / failed by a vote of \_\_\_ to \_\_\_.*

# About Voting...

- Majority vote is required for *most* motions in Robert's Rules
  - Exceptions generally include motions that affect the rights of members; when legally required; or,
  - Special rule; or,
- State Law and/or Ordinances may require two-thirds

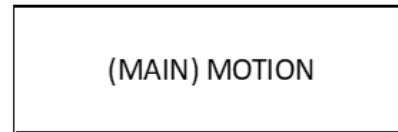


Subject	Cite	Notes
Vacation of street, alley, or public ground	SDCL 9-45-9	2/3 of all members
Conflict of Interest	SDCL 6-1-17	2/3 of the governing body
Override Veto	SDCL 9-19-11	Two-thirds vote of the aldermen
Capital outlay accumulation	SDCL 9-21-14.2	2/3 of governing body
Transfer of Surplus Funds to pay off debt	SDCL 9-21-26.1	Two-thirds vote
Appropriation and condemnation of private property—Resolution of necessity	SDCL 9-27-1	2/3 majority of all members
Denial of assessment protest petition	SDCL 9-43-86	Two-thirds vote of governing body
Exclusion of territory from municipality on petition or by vote of governing body	SDCL 9-4-6	Two-thirds vote of the governing body
Zoning protest petition	SDCL 11-4-5 Ordinance §160-654	Ordinance effective if approved by two-thirds of the governing body (not applicable to ordinance regulating or establishing floodplain)
Review and recommendation by county commission when land subject to joint municipal-county jurisdiction--Vote of city council required upon disapproval by county commission--Board may designate county official to make recommendation to city council in lieu of county commission.	SDCL 11-6-26.1	Two-thirds vote to approve if recommendation by county PC is to deny
Street construction specifically authorized by ordinance--Vote required to overrule planning commission	SDCL 11-6-37	Not less than two-thirds of the entire membership of the city council or said governing body.

# Agenda Item

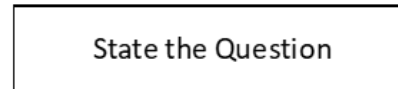
The Chair asks for a (main) motion on the Item; OR a member introduces a Secondary motion.

Member: "I move to [action] Item X"



Another member seconds

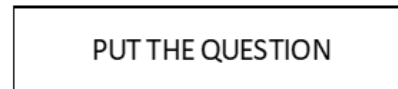
The Chair states the question: "Motion by \_\_\_\_, second by \_\_\_\_ to [motion]"



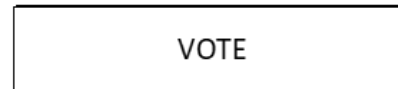
The Chair opens the floor to debate: "I now turn it over to the Council for discussion/debate"



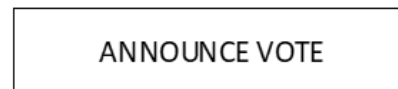
Once discussion/debate are complete: "Hearing no further discussion/debate...[direct type of vote]"



Members vote: Respond "yes" or "no"

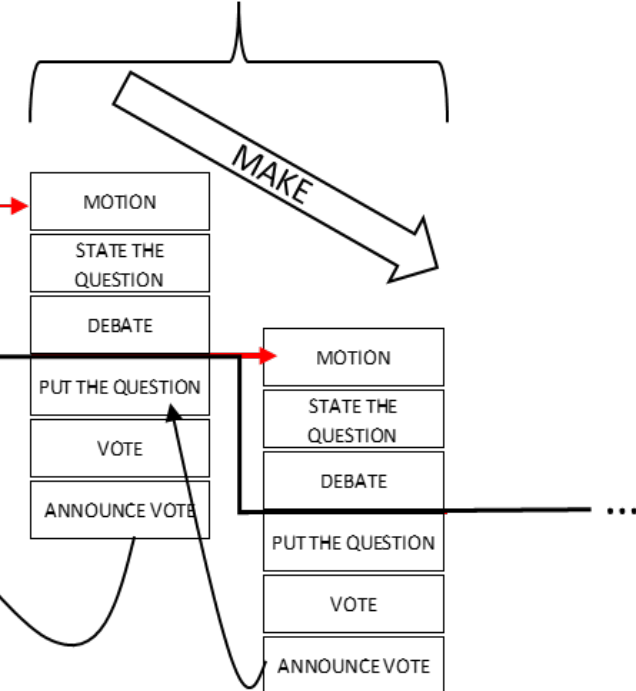


Chair: "that has passed/failed \_\_\_\_ to \_\_\_\_ . Next item, please."



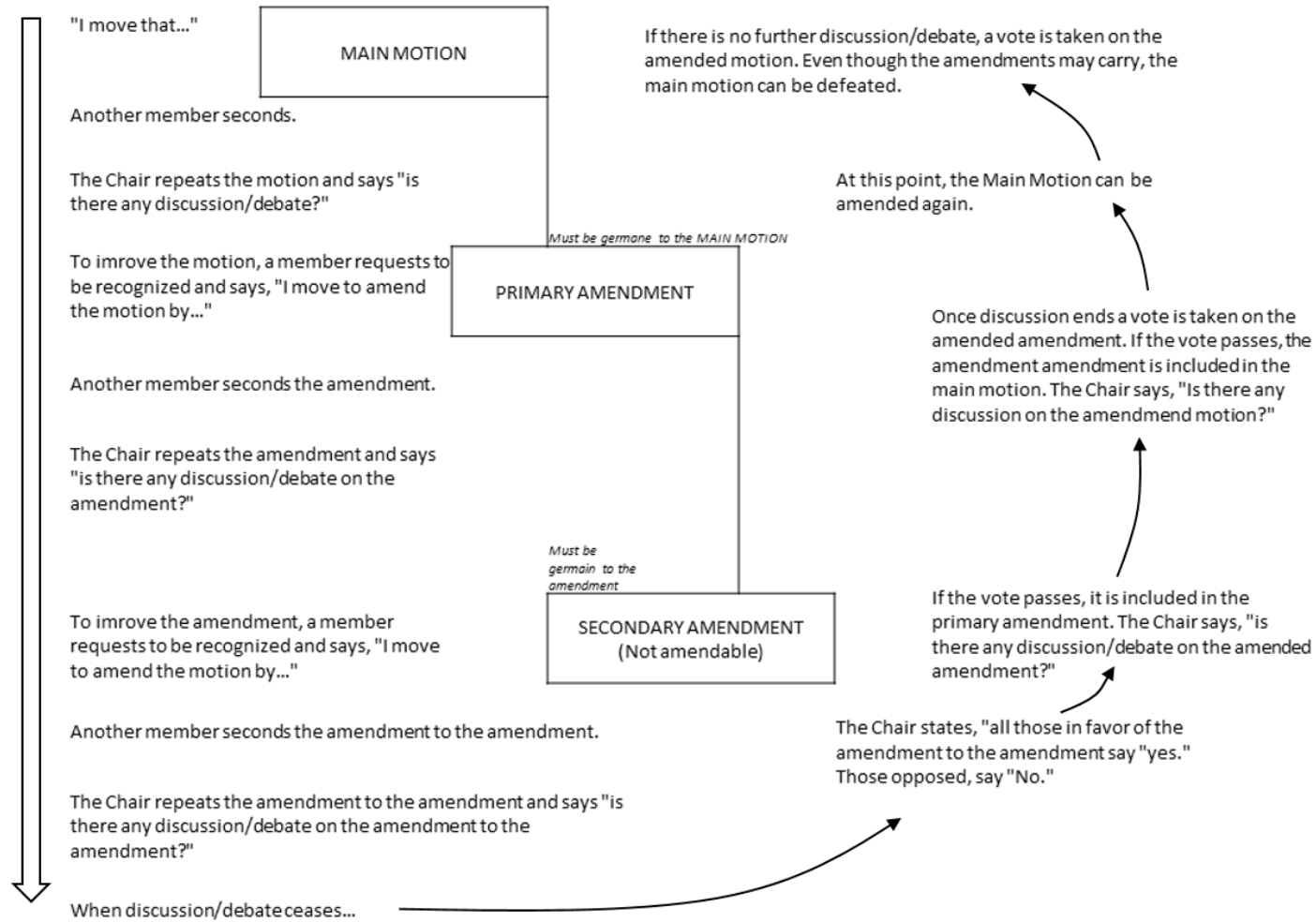
## Secondary Motions

OR



# Start

# End



(From: <https://www.afsc.noaa.gov/education>)

# Amend



# Getting Stuck...

- If you think there is an issue with process:
  - Point of Order
  - Point of Information
  - Parliamentary Inquiry
- The chair has the responsibility to rule on all points of order...
  - Can be appealed – the body conclusively decides
  - Becomes a future rule
- Don't be so rigid that you can't complete the business at hand
  - Ask questions...
  - Prepare a script...
  - When in doubt, vote it out...



# For More Information

- Robert's Rules of Order, Newly Revised: *12<sup>th</sup> Edition*
- Official Website: <https://robertsrules.com/>
- Sioux Falls City Clerk ([tgreco@siouxfalls.org](mailto:tgreco@siouxfalls.org) or 605-367-8081)

# Conflicts of Interest

Elected Officials Workshop

# Conflicts of Interest: Legal rules

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State Statutes generally prohibit any municipal officer from having a financial interest in a contract entered into by the municipality.

Some exceptions apply. Please ask your City Attorney rather than relying on your own interpretation.

Some local governments have additional requirements such as the avoidance of impropriety.

Source: SDCL ch. 6-1, SDCL 3-16-7

# Two questions on Conflicts of Interest

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1. If you can answer the question: “What’s in it for me?” in the affirmative, then be extremely cautious.



2. If you would not want it published on the front page of the local newspaper, then you may not want to do it.



# Conflict of Interest?

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City Official renders supplies to his City where no other sources are available within the City?

City Parks Director enters a bid on her City's park project?

City Official is a member of the Area Economic Development Corporation, which receives funding from City?

City Official receives an unsolicited meal/beverage from City vendor within a certain time of an official act regarding that vendor?

See: SDCL 6-1-2



# A Closer Look at Conflicts of Interest

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- SDCL 6-1-17 (2005): “No county, municipal or school official may participate in **discussing or vote** on any issue in which the official has a **conflict of interest.**”
- Identifies a specific conflict: “**direct pecuniary interest.**”
- Or any conflict that a two-thirds vote of the body determines is an identifiable conflict of interest that should prohibit the official from voting.
- “If an official with a direct pecuniary interest participates in discussion or votes on a matter before the governing body, the legal sole remedy is to invalidate that official's vote.”



# More on Conflicts of Interest

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- SDCL 6-1-1 prohibits any officer of a county, municipality, township, or school district, either appointed or elected, “to be interested, either by himself or agent,” in the listed contracts entered into by the local government; contract is null and void.
- SDCL 3-16-7: A public officer who has authority to enter into a contract in their official capacity, who “voluntarily becomes interested individually” is guilty of a Class 2 Misdemeanor.





# Quasi-Judicial

Elected Officials Workshop

# Types of Governmental Actions:

Governmental bodies, tribunals, agencies, boards, and officials, in performance of their public duties, exercise functions that are divided into three general categories:

1. Legislative
2. Executive
3. Quasi-Judicial

One action can be a combination of all three.

**Source:** Hyson v. Montgomery County Council, 242 Md. 55, 62, 217 A.2d 578, 582 (1966).



# “Legislative” versus “Quasi-Judicial”

A “legislative” action is usually open-ended, affecting a broad class of individuals or situations. A “quasi-judicial” action tends to be more retrospective, affecting certain individuals.

A “legislative” action results in the formulation of a general rule or policy. A “quasi-judicial” action results in the application of a general rule or policy.

Source: M. Holman, Ohio State LJ, Vol. 33, Zoning Amendments—the Product of Judicial or Quasi-Judicial Action, at 130, 134.

# Executive/Administrative Action

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Executing or  
administering a  
law already in  
existence

Source: M. Holman, Ohio State LJ, Vol. 33, Zoning Amendments—the Product of Judicial or Quasi-Judicial Action, at 130, 134.



## Quasi-judicial defined

“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[.]” SDCL 1-32-1(10)



# Types of Quasi-judicial Acts:

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Issue a License or Permit, such as Conditional Use Permit or an alcohol license or a Variance.

Rezone a Property under an existing set of zoning ordinances.



Photo: iStock/Sabathai



# Two SD cases on Quasi-judicial:

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Armstrong v.  
Turner Co., 772  
N.W.2d 643 (SD  
2009)

Hanson v.  
Minnehaha Co.,  
2014 S.D. 75

# Questions after Hanson:

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Are quasi-judicial matters beyond CUPs affected by the decision?

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Can Public Officials have any ex parte communications on a “quasi-judicial” matter? Would those communications disqualify that Public Official as a decisionmaker?

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Can Public Officials use background knowledge in a quasi-judicial matter? Would its use in rendering a decision disqualify that Public Official as a decisionmaker?

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How should a quasi-judicial hearing be conducted?

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The 2015 SD  
Legislature's  
response:

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Adopts SDCL §§ 6-1-18  
through 21.

Governs Public Officers  
of municipalities,  
counties, and townships.

# Who can we talk to?

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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. SDCL 6-1-18

# How do we do the hearing/meeting?

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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. SDCL 6-1-19

# What if we talked to someone outside the meeting?

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“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.”

SDCL 6-1-20



# When does the law require a recusal?

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“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.”

SDCL 6-1-21

Holborn et al v.  
Deuel County BoA  
955 N.W.2d 363 (SD  
2021)

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County Board of Adjustment considered Special Exemption Permits (i.e. CUP) to develop two wind energy systems in Deuel County.

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Appellants alleged several members of the Board were biased and should have been disqualified.

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Deposition of each Board member examined their possible disqualifying interests.

Due process requires a **fair and impartial consideration** by a local governing board conducting a “quasi-judicial” hearing.

Generally, a **direct pecuniary interest** is grounds for disqualification, along with those rare instances where disqualification may be required without a direct pecuniary interest.

Holborn et al v. Deuel County BoA, supra

Holborn et al v.  
Deuel County BoA  
955 N.W.2d 363 (SD  
2021)

Courts determine due process standards but applied additional standards adopted by the SD Legislature.

Board members each disclosed their potential conflict on the record during the hearing, then stated they could act fairly in considering the permits.

Court noted the presumption of fairness for each Board member under SDCL 6-1-21.

Recusal warranted when considering the Board member's activities, not relationships the officer may have with others. (discussions with brothers)

## Miles v. Spink County BoA

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Appeal from the County's consideration of a CUP for a CAFO.

Ex parte comments from general public to BoA members did not violate due process.

“Considering the rural population of Spink County, communications with opponents to a resolution are bound to occur and do not rise to the level of a serious risk of actual bias.” Miles v. Spink Co. BoA, 972 N.W.d 136, 150 paragraph 42 (SD 2022)

## Miles v. Spink County BoA

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The Court noted mere speculation about public repercussions did not rise to the level of a serious risk of actual bias for one BoA member.

“While it is true that elected decisionmakers sometimes experience backlash from their constituents for decisions made in the execution of their duties, this is an expected part of public service.” Id. at 151, paragraph 45.



Court recognizes  
your unique role:

“Unlike judges, who are subject to strict codes of judicial conduct requiring disqualification in a ‘proceeding in which the judge’s impartiality might reasonably be questioned,’ . . . Quasi-judicial decisionmakers are governed by SDCL 6-1-17 and SDCL 6-1-21, statutes which provide direction for local decisionmakers whose varied duties regularly require them to act in administrative, legislative and judicial capacities.”

Miles v. Spink Co. BoA, 972 N.W.d 136 n. 15 (SD 2022)

# We are all in this together:

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Full disclosure to your City Attorney of your business dealings, land holdings, and close relationships with people who may come before your public body. Consult whenever these connections may be involved in any matter before the public body.

Disclose potential agenda conflicts at the start of the meeting. State whether the public official can fairly and impartially render a decision on the matter in question.





Keep everyone in  
the loop:

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Advisement at the bottom  
of your agenda.

Staff/City Attorney alerts  
you whenever a quasi-  
judicial matter is coming.

## Agenda advisory:

WHEN THE CITY COUNCIL WILL ACT AS A DECISION-MAKER ON AN UPCOMING MATTER INVOLVING A LICENSE OR A PERMIT, PERSONS ARE ENCOURAGED TO PROVIDE WRITTEN COMMENTS TO THE ENTIRE CITY COUNCIL OR TO PROVIDE ORAL COMMENT AT THE PUBLIC MEETING WHEN THAT ITEM IS CONSIDERED BY THE ENTIRE CITY COUNCIL. THOSE WHO PROVIDE COMMENTS IN ANY MANNER SHOULD UNDERSTAND THAT THEIR COMMENTS MAY BECOME PART OF THE OFFICIAL RECORD AND SUBJECT TO REVIEW BY ALL PARTIES AND THE PUBLIC.

# Public Statements

Elected Officials Workshop

# Elected Officials & Freedom of Speech

Courts recognize the public wants to hear the opinion of their elected officials





# Communications of one or the group:

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## **Written or verbal pronouncements of a single City Commissioner:**

Could the public view it as coming from the entire Commission?

Avoid confusion by clarifying that the Commissioner is speaking for himself/herself as one Commissioner, not for the entire body.



## **Correspondence on Commission letterhead:**

City Commission approves it at a public meeting as the message from the entire body.

Authorize the Chair of City Commission to draft the letter reflecting the points discussed by the body and to sign it on behalf of the entire Commission. Avoids two meetings if time of the essence.

# GOVERNMENT PRACTICES HOTLINE

1-888-313-0839

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# QUESTIONS?

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# Thank you!

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