

**SOUTH DAKOTA OPEN MEETING COMMISSION  
STATE'S ATTORNEY REQUIREMENTS**

**In order to refer violations to the South Dakota Open Meeting Commission the following is required:**

- (1) A criminal complaint must be submitted that comports with the requirements of SDCL 23A-2-1. The complaint must be signed by the complainant and made under oath.
- (2) The State's Attorney must state with specificity his or her findings on issues presented and itemize those issues that remain open for commission consideration.

**The following type of format should be used to the extent applicable:**

**Date(s) of Violation(s):**

**Statement of Material Facts:** For example, "Town Board went into executive session under the "personnel exception" but discussed street resurfacing. No attorney or legal communications were involved. Asphalt company representative was in the executive session. Afterwards the Board voted in public to amend asphalt contract to expedite resurfacing to avoid inconvenience to the hardware store. Witness A alleges that the discussion involved contract issues. Witness B admits that the discussion involved inconvenience to the hardware store during resurfacing. Their voluntary statements are enclosed." A short explanation of this nature should be offered for each allegation involved.

**Concise statement of legal issues presented:** For example, "There is a legal question as to whether discussion of a contract amendment is a permissible use for executive sessions. The town's stated reason of "personnel" is wrong and the town admits it. The "contractual matters" provision in SDCL 1-25-2(3) does not apply because no legal consultations are at issue. The "negotiation" provision in SDCL 1-25-2(4) may apply. It pertains to "preparing for contract negotiations or negotiating with employees or employee representatives." There is a legal question as to whether SDCL 1-25-2(3) applies to all contractual matters or just those dealing with employees or employee representatives. Further, there is a legal question as to whether the asphalt representative may be present during an executive session. This is an example. A short explanation of this nature should be offered for each allegation involved.

**Identify other litigation pending on the same subject:** For example "The asphalt company sued in the Brookings County regarding contract amendments, but that lawsuit does not make open meeting commission claims. John Doe represents the city and Jim Anderson represents the company."

**States Attorney Conclusions as to issues presented:**

**State's Attorney Statement of Legal issues to be considered by Commission:**