

Staggers' statement before Ethics Board.

Approximately nine days after city employees received a letter from the Staggers for Mayor Campaign and five days before the April 13th mayoral election Mr. David Dunteman and Mr. Michael J. Olson filed a formal ethics complaint against City Council member and mayoral candidate Kermit Staggers.

In a written statement Mr. David Dunteman declared that in his capacity as the "President of the Fraternal Order of Police Labor Council #1" he was writing "on behalf of the Employee's [sic.] of the City of Sioux Falls" and wanted to point out that "Several employees were concerned that Mr. Staggers had used his position as a City Councilman to obtain their confidential home addresses."

Mr. Dunteman's concern was not over his own home address because he never received a letter from the Staggers for Mayor Campaign, but his concern was over one letter mailed to city employee John Hedeem's new home address which was not the same as his older voter registration address.

Despite having served as a former detective, Mr. Dunteman immediately jumped to only one conclusion that Mr. Staggers had "possibly used his position as a Council Person to use confidential information such as home addresses for his own personal endeavors." Mr. Dunteman refused to call Mr. Staggers at his home phone number, which is clearly listed in the telephone book, to discover the truth as to how Mr. Hedeem received a letter despite having recently moved to a new address. Instead, Mr. Dunteman along with Mr. Olson decided to initiate this formal ethics complaint in the midst of a hotly-contested political campaign.

The truth of the matter is that the Staggers for Mayor Campaign obtained the names of city employees (public record) and compared them to a list of registered voters from the South Dakota Secretary of State's Office (public record) to develop a mailing list to city employees. As a final step in the process and in accordance with U.S. Postal regulations, our mailing service, Qualified Presort, compared our mailing list with an updated address data base before sending out the mailing to city employees. This final step in the process discovered Mr. Hedeem's new address, and he got a letter from the Staggers for Mayor Campaign.

At this time, are there any questions?

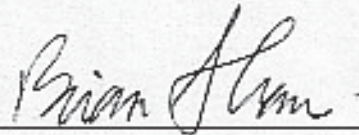
AFFIDAVIT

My name is Brian Shaw and I am the Sales Manager for Qualified Presort Service, LLC. I am personally aware of a mailing which was delivered to us by the Staggers for Mayor campaign. The Staggers for mayor campaign provided a data list of individuals and their addresses to which the mailing was to be sent.

When we process a data list for a mailing the list is checked for duplicate addresses and names and the names/addresses are checked against a postal database for potential moves filed with the United States Postal Service (USPS) over the last 18 months. If we receive a hit from the postal database we must apply that new address prior to delivering the mail to the USPS in order for us to be in compliance with the USPS rules on receiving discounted postage.

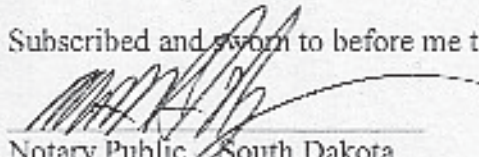
The data list provided to us by the Staggers for Mayor campaign was typical of the data lists we receive from many different sources.

Dated this 15th day of April, 2010.



Brian Shaw
Sales Manager
Qualified Presort Service, LLC

Subscribed and sworn to before me this 15th day of April 2010.



Notary Public South Dakota

My commission expires on 23rd day of January, 2015.

STEVEN G. HAUGAARD

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May 6, 2010

Sioux Falls City Board of Ethics

In re: Kermit Staggers

Members of the Board of Ethics:

On behalf of Mr. Staggers we first of all want to express our appreciation for the opportunity to be heard in regard to this matter. Had we known of the additional concerns in advance we certainly would have been better prepared at the time of the hearing to fully address those matters.

I would like to try to maintain some order in these responsive thoughts so I will first address the original written complaint. It appeared that the Board had essentially put that matter to rest as far as the way in which the addresses were generated. Again, Mr. Staggers simply employed the services of Qualified Presort and they update addresses with their software. Nothing improper about that.

Additionally, it should be noted that anyone could have obtained Mr. Hedeem's new address by simply using the United States Postal Service address correction service. The mailing would have been sent to the old address and, if the address had changed, the post office would advise of the new address. Certainly nothing inappropriate about that.

After the written complaint appeared to be adequately addressed the Board did raise new issues. Those revolved around the City Charter section 7.02(4) and City Charter section 2.05. I will speak to the application of those sections in greater detail after I give a brief response to some of the questions presented by the Board.

QUESTIONS RAISED:

First of all, one of the members inquired as to the "intent of the letter". This wasn't part of the original written complaint but it at least involved the letter itself. The intent of the letter Mr. Staggers sent was clearly stated in the first paragraph of the letter and Mr. Staggers affirmed that at the hearing. It was strictly informational. Nothing there that violates any ethical considerations.

Another member expressed a concern that something was being "solicited". In fact, the word "soliciting" itself is not correctly applied to Mr. Stagg's letter as the letter was designed only to explain Mr. Stagg's background and experience.

The section which speaks of "soliciting" (section 7.02(4)) is solely concerned about financial gain. A fair reading of Mr. Stagg's letter does not suggest any type of financial solicitation. In fact, he didn't even ask for their vote. He simply encouraged them TO vote. And, if the concern was that Mr. Stagg was soliciting an opinion, then we simply look to the last line of section (5) which affirms that city employees do not surrender their rights to have an opinion and to express that opinion. It states: "The expression of private or personal views concerning candidates for political office is not prohibited hereby."

There was a passing comment as to the matter in which Bob Litz was involved, but that was not an apt comparison and was not factually similar at all. I know that the Board member was not trying to say that they really compared at all, but it is important to remember that Mr. Litz held multiple positions within the city government, had competing interests from the standpoint of his city responsibilities, and, as the Ethics Board Opinion (07-3) states "...Litz had an indirect financial interest in matters before the City." That matter clearly has no comparative value to Mr. Stagg.

Another question raised was concerning the manner in which the list of recipients was determined. Again, Mr. Stagg explained that the letter was intended to go only to city employees who are city residents and who are also registered voters. Mr. Stagg's daughter obtained the voter information from the state and then matched it against the public list of city employees. The voter list was then used to compile the list of recipients. That information was delivered to Qualified Presort and they applied their "change of address" program which automatically sent the letter to updated addresses of all of the people named on the list. The one letter going to the gentleman from Harrisburg was unintended as he presumably would no longer vote in Sioux Falls. 'But for' the efficiency of Qualified Presort that letter would not have been sent as it was a waste of campaign money.

ISSUES PRESENTED / INTERPRETATION OF THE CHARTER AND ORDINANCE:

SOLICITING:

It was obvious that no one clearly understood the terminology used in City Charter section 7.02(4) in regard to "...assessment, subscription, or contribution..." as no one expressed an understanding of the scope and intent of the words contained in that charter section.

Sioux Falls City Charter section 7.02(4) states that "No person shall knowingly or willfully solicit or assist in soliciting any assessment, subscription, or contribution for any political party or political purpose to be used in conjunction with any city election from any city employee."

There may be other sources from which Sioux Falls eventually obtained that section, but I personally found it in the Harvard Law Library and it obviously was taken from the 1922 Model City Charter compiled by the National Municipal League or some (prior or subsequent) variation of that model. The National Municipal League was, at that time, based in New York, New York. That organization commissioned its 'Committee on Municipal Programme' to compile Model Charters to be used around the country.

In that Model City Charter it states as follows:

"No person shall take part in preparing any political assessment, subscription, or contribution with the intent that the same shall be sent or presented to, or collected from any person in the classified service of the city, and no person shall knowingly send or present, directly or indirectly, in person or by letter any political assessment, subscription, or contribution, to, or request its payment by, any person in the classified service." (Emphasis supplied.)

These are all terms of financial art. Uniformly their primary individual definitions are that of a financial concern. Taken as a whole, it is patently obvious that they are cumulatively addressing what we would now contemplate as "graft" or, if voluntarily flowing from the payor to the payee, they would be "bribes".

In addition to that we can see the words following those phrases in the original model are speaking of "...presented to, or collected from..." and "...request its payment by...". Obviously indicating the receipt of some financial gain.

Accepted definitions of those key words as they are used in the context of the Charter section are:

Assessment: An amount determined as payable;

Subscription: The raising of money from subscribers. A sum of money so raised. Membership fee, charge, dues, annual payment, retainer; and

Contribution: Imposed or required payment. A payment exacted for a special purpose; an impost or a levy.

THING OF VALUE:

Mr. Tornow seemed to be advocating a position, as opposed to simply providing guidance to the Board, when he spoke of the section 7.02(5) phrase "...anything of value...". The assertion seemed to be that the phrase was a 'catch all', but when the two sections are read in context the obvious meaning was something of a tangible financial value. Both sections (4) and (5) speak in terms of financial gain except where (5) indicates that it would be a violation to "...render service..." in behalf of a candidate. However, section (5) doesn't even apply to Mr. Staggars as that speaks to the prohibition of a city employee who would contribute "money or anything of value to or render service" to a candidate for city office.

I understand that section (5) was referenced as a means to possibly interpret section (4), but to read section (5) as somehow contextually explaining section (4) does not make interpretive sense as section (4) is distinctly referencing its own category of financial concerns. Section (4) attempts to set forth the general idea that one cannot seek financial gain for the benefit of a political activity. Section (5) is addressing the restriction on city employees from contributing money, thing of value, or service to a campaign. Section (5) has nothing to do with Mr. Staggars as the second sentence indicates that he is exempt from its provisions. Lastly, section (5) was never intended to silence anyone from expressing their private or personal views concerning candidates.

(5) No city employee shall, directly or indirectly, contribute money or anything of value to or render service in behalf of the candidacy of any candidate for nomination or election to any city office. Elected officials and spouses of city employees acting on their own behalf are exempt from this prohibition. The expression of private or personal views concerning candidates for political office is not prohibited hereby.
(Emphasis supplied.)

A reasonable interpretation of the last line of section (5) suggests that one's opinions, endorsements, encouragements, are NOT to be considered "things of value" for purposes of this section. LIKEWISE, Mr. Staggars' comments in his letter were simply expressions of his personal views.

Incidentally, every other candidate for mayor almost certainly sent some type of literature to some of the city employees as the other candidates would have used at least a general voter list. Such a list would contain city employees who vote or are registered to vote. Does that rise to the level of a solicitation? Is that sufficient for the Board to investigate their actions as well?

If this committee takes the position that a 'pat on the back' or a word of encouragement from a city employee is a 'thing of value', then you will certainly open this ethics review process up for ridicule. If this paragraph needs to be amended it would be appropriate to make that recommendation to the council, but not in the context of the

complaint now before the Board. To apply these sections to Mr. Staggars is certainly a misconstruction of the purpose and intent of the charter.

We must also remember that the Sioux Falls city election is conducted by means of a secret ballot. Mr. Staggars will never know whether any particular city employee voted for him or not. It is impossible for him to have "secured" anything by means of his letter.

HOLDING OTHER OFFICE:

Another issue raised at the hearing is that of the restriction upon a council member holding "...any other elected public office...". I will express my observations and arguments as to the procedural aspects of this matter toward the end of this statement, but I also believe the Board, or its advisors, should have evaluated the merits of these allegations before they rose to the level of a "complaint".

The Charter provision is as follows:

Section 2.05. Prohibitions.

(a) Holding other office. No council member shall hold any other elected public office during the term for which the member was elected to the council. No council member shall hold any other city office or city employment during the terms for which the member was elected or appointed to the council. No former council member shall hold any compensated appointive office or employment with the city until two (2) years after the expiration of the term for which the member was elected or appointed to the council. Nothing in this section shall be construed to prohibit the council or mayor from selecting any current or former council member to represent the city on the governing board of any regional, national, or other intergovernmental agency.

The simple response to the allegation that Mr. Staggars violated the above referenced section is that the position of 'Republican Precinct Committeeman' held by Mr. Staggars is NOT a public office.

A bit of historical background may again be helpful. At the time Mr. Staggars was elected to the city council he was also serving as a state senator. On the day that he was to be sworn in to serve as a council member Mr. Staggars resigned his senate office prior to taking the oath of office to serve as a council member. He understood that he could not serve in both of those 'elected public offices'.

A bit of dictionary review helps us to understand whether section 2.05 applies at all to Mr. Staggars. The pertinent words are as follows:

Elected is defined as ...to select by vote for an office or membership. (The Board members heard how Mr. Staggers came to be the precinct committeeman.)

Public office is defined as ...of, concerning, or affecting the community or the people as a whole. (This is not a public office.)

According to Black's Law Dictionary a "public official" is "[o]ne who holds or is invested with a public office; a person elected or appointed to carry out some portion of a government's sovereign powers." "Public officer" is defined in a similar way. For this research, the terms "public officials" and "public officers" are interchangeable.

To further elaborate on how NON public the office of Republican precinct committeeman is we only need to consider the requirements for the position. To be a Republican precinct committeeman the person must be 1) an adult, 2) registered to vote as a Republican, 3) a man (not a woman as they have a separate exclusive title for committeewoman), and 4) a resident of that precinct. It is no more a "public office" than serving as chairman of your church board. To assert that a council member also serving as a precinct committeeman is a violation of the City Charter is akin to asserting that a council member being elected as President of the local Kiwanis club would be a violation of the City Charter.

PROCEDURE:

Mr. Staggers correctly observed that he was "blind sided" in finding that allegations entirely unrelated to the original complaint were being presented. He simply responded to the new assertions because they, too, were baseless. One would have expected that the city attorney advising the Board of Ethics would have researched the meaning of the words prior to fomenting concern that something was amiss.

For the Board of Ethics to take the position that ANY complaint opens the door for an exhaustive investigation beyond the specifics of the complaint is to throw the door open for potential abuse of the procedure. It also has the appearance of a means for anyone to abuse the power of the Board. Consider the possibility of someone filing a "specific" complaint against any council member (whether valid or not), and then citing the entire charter and code...hoping to create enough political stir so as to destroy a person's reputation, or at least consume a massive amount of that person's time and energy in defense of a frivolous claim.

It is also a real possibility for a 'hopeful complainant' to bring a baseless allegation with the expectation that the Board will hire an investigator to find something / anything to run with. Further, I am not aware of any sanctions built into the Charter or Ordinances in response to a frivolous claim.

I understand that the Board may also act of its own initiative based upon Section 35(h) and Section 35(e)(1) via Section 2.09 and 35(e)(7). However, where in the world did the issue of the "elected public office" come from? Was that an issue someone had been concerned about before, and, if so, why was it not brought as a formal written complaint so the "accused" could prepare to defend himself against both the allegation and the accuser?

AGAIN, Section 12 ½ - 35 specifically states that a complaint MUST be in writing, and MUST state in detail the act or acts complained of. Even if it was an issue raised by the Board itself it would seem a reasonable courtesy to have written out the allegation with a reasonable supporting explanation, especially if it came from the Board. Had that much been required then the Board might have found in analyzing the issue and preparing the Complaint that the claim was unfounded.

Also, it is the Board who has the authority to investigate the original complaint and to then pursue other issues, presumably related to the original allegation. However, in this case, I am particularly curious to know if the Board (the five members) is the source of looking into the new allegations, or if that information came from someone other than the five members of the Board. If it did not originate with the Board itself, then there should definitely be a formal written complaint. Otherwise, it seems the Board itself has violated its own procedural requirements, and possibly acted in an unethical fashion.

In fact, there should be a formal written complaint whether the matter originated with the Board OR from someone else. The idea that any complaint opens the floodgate of an exhaustive investigation searching the entire code and charter for any potential violation appears to be contrary to a prudent exercise of the duties of the Board of Ethics.

Because Ethics Board investigations are confidential it is impossible for us to know, but one would ask the Board if this is the manner in which they pursue all ethics complaints, or if this has been handled differently. If all are not handled in this fashion, then what determines the extent of investigation? And how do you achieve consistent application of those investigative powers? Does the investigation include a review of every section of the charter and ordinances to determine if a violation exists? And how much time does the Board authorize the investigator to expend?

If one desired to purge the entire city of all ethics violations, then one would make simple complaints against all employees with the expectation that the Board of Ethics would pursue to the greatest extent possible any and all violations of every city employee. But, such a result would be an abuse of the system, much like the original complaint in this matter. The original complaint could have been obviated had the complaining parties (both being detectives or former detectives) simply picked up the phone and made a call. In fact, the original complaint was simply concerned about the source of the address for one employee but somehow grew into a host of other issues.

SCOPE AND SOURCE OF PROCEEDINGS:

One might reasonably view the complaint with some degree of suspicion in light of its source. The individual signing the Complaint asserted that he was writing on behalf of ALL city employees. He apparently used his city owned office equipment to compose the complaint as he used his city office address. And, he signed the letter in his capacity as the president of the law enforcement union. It was no secret that the unions were not supporting Mr. Stagers. This is simply food for thought and usually a first step for any investigation is to consider the source.

Obviously, I disagree with the Board's view that any allegation opens the door for everything. And I realize that the Board can act on its own initiative, but even with the application of Administrative Law there remains an obligation to comply with the purpose and intent of the originating section, which in this case is section 12 1/2 - 35. That section was clear in its purpose to avoid ill defined allegations and to require the accuser to be known to the accused. In this case one can certainly expect that the city attorney should at least be able to explain the content of a city charter section or ordinance prior to the matter being shaped into a complaint.

In the instant case the initial complaint is without merit and the newly presented claims have not even a remote connection to the original complaint and neither of the new "allegations or complaints" comply with the reasonable requirements of section 35 as they are NOT in writing and have NOT been sworn to before a notary public...the purpose of which is to allow the accused to know by whom they are being accused.

SUMMARY AND CLOSING:

If the Board moves this forward, then the procedure requires that the Board of Ethics "prosecute" the case as set forth in section 35(e)(3). Section 35(e)(4) indicates that the city attorney shall act as legal advisor to the city council members, so the city attorney could not serve in both capacities.

If the Board of Ethics finds these sections of the charter and ordinances to be troubling given this fact situation, yet not a violation, then the Board should choose the route of recommending a study or submit revisions for the council to consider. There are more appropriate means of addressing issues of confusion for the city rather than using this complaint and Mr. Stagers' time to exhaust the possible applications of the charter and ordinances.

In summary, the original complaint was specific and was shown to be based upon a lack of information and without merit. The unwritten allegations were simply misinterpretations of the charter and its archaic language. That language was commonly known to attorneys around the turn of the previous century, but it is no longer useful,

especially when the desire is for laymen to be able to understand and apply the law. As to the additional "public office", a cursory review of the statute should have brought that to a close.

Mr. Stagers is a man of integrity as is demonstrated by his unwavering commitment to principals of government and his restraint in his public statements surrounding the election. He has acted upon the requirements of the city and state as to limitations of service and he has received the outcome of the election with dignity. With all of that in mind we ask that the Board of Ethics dismiss the complaint/ complaints.

Thank you for an opportunity to provide input in this matter. If the Board wishes to receive additional information or if the Board believes an additional hearing would be of value, please let me know and we will accommodate that request.

Very truly yours,
HAUGAARD LAW OFFICE, P.C.

Steven G. Haugaard