

Before I begin my formal presentation, let me say that my lawyer and I have spent a great deal of time on this issue and that both of us consider this time well spent. A wrong needed to be righted, so that things like this never again happen to a city council member, a mayor, a city employee, or an ordinary citizen. I must add that the Board of Ethics and the City Council may not always agree with each other, but the Board and Council should foremost be the servants of the people.

And now, let me begin my formal remarks.

My name is Kermit Staggers and I am the complainant in Case 10-3 against the City of Sioux Falls Board of Ethics. Unfortunately, my lawyer Steve Haugeard with offices at 1601 East 69th Street in Sioux Falls is unable to be here today due to a previously scheduled obligation.

I would first like to thank the members of the Open Meetings Commission and Diane Best of the Attorney General's Office for traveling all the way to Sioux Falls so that this meeting can take place.

I would also like to thank City Attorney David Pfeifle for being here today and for his candid letter to the Open Meetings Commission Members dated October 29, 2010. In the letter he declares that the Board of Ethics legal adviser, who happened to be Assistant City Attorney R. Shawn Tornow, gave advice on May 4, 2010 that an official vote could take place in executive session. This according to Pfeifle was a clear violation of state law and that once discovered Tornow was immediately removed from his position as the Board of Ethics legal adviser. However, not all the blame for violating state law by the Board of Ethics can be placed on the shoulders of former City Attorney Tornow who has now left city government. The members of the Sioux Falls Board of Ethics must step forward and take responsibility because they actually broke the law

Past history clearly indicates that the current members of the Board of Ethics understand that the proper procedure for taking official votes is during a public session,

and not during a closed executive session. For example, on October 5, 2009 current Board members Attorney Michael McKnight, Attorney Howard Paulson, and Mari Robbennolt voted in public to approve Confidential Advisory Opinion 09-1 and Confidential Advisory Opinion 09-2, along with current Board member Bill O'Connor voting for the latter opinion. On December 11, 2008 current Board members Attorney Michael McKnight, Mari Robbennolt, and Bill O'Connor once again voted in public to approve Confidential Advisory Opinion 08-2. Once again, the Board of Ethics has a publically documented history of complying with state law by voting on confidential issues in public, and not in executive session.

Excluding newly-appointed Ethics Board member Robert Swanhorst, the other current members of the Board of Ethics have over seventeen years of combined experience serving on the Board. Chair of the Board, Attorney Michael McKnight has served two and a half years (appointed May 2008); Vice Chair, Attorney Howard Paulson, one year and eleven months (appointed December 2008); Bill O'Connor six and a half years (appointed May 2004); and Mari Robbennolt six and a half years (appointed May 2004). With the legal expertise of attorneys McKnight, Chair, and Paulson, Vice-Chair, sitting on the Board, with over seventeen years of total Board experience, and with the previously-mentioned public votes on confidential issues, any reasonable person would conclude that the members of the Board of Ethics were unquestionably aware of their responsibilities under the state's Open Meetings Law.

While the City Attorney's October 29, 2010 letter readily admits that the Board of Ethics violated the Open Meetings Law, there is still the unresolved issue of when the Board conducted two secret votes, one vote to dismiss the formal ethics complaint against me and the second vote to issue an unauthorized letter of reprimand. There is no public documentation as to when these votes took place. Were the two votes taken on May 4th? Were there other meetings when the votes were taken? Did voting take place by way of emails? Did the votes take place before or after the submission of my lawyer's May 6th nine-page brief that demolishes all the allegations against me? Are there serious due process issues involved in this case? Despite repeated phone calls to the Recording Clerk

of the Board of Ethics and a telephone conversation between my lawyer and City Attorney Pfeifle, information as to when these secret votes took place has not been forthcoming. Why the secrecy?

Despite this veil of secrecy, two issues are crystal clear. First, action, i.e., discussion and maybe voting, was taken by the Board of Ethics on May 4, 2010 in executive session, and second that members of the Board of Ethics readily admitted that they broke state law. Reading verbatim from the October 28, 2010 minutes of a special meeting of the Board of Ethics:

David Pfeifle advised the Board of an open meetings complaint filed with the Minnehaha County State's Attorney and subsequently the Open Meetings Commission by Kermit Stagers. The complaint concerned the Board's May 4, 2010 meeting where action was taken by the Board in executive session.

Pfeifle recommended that the Board admit to the violation of the open meetings law with the explanation that it had relied on counsel's erroneous legal advice and that the Board had no intent to disregard state law.

Pfeifle went on to explain the Commission's procedure and the possibility of a public reprimand.

A motion was made by Mike McKnight and seconded by Mari Robbennolt to authorize Mr. Pfeifle to proceed with the admission as Mr. Pfeifle recommended. Three Yeses. Motion carried unanimously.

This open and public admission of guilt by the Sioux Falls Board of Ethics demands that justice be carried out and that R. Shawn Tornow, Michael McKnight, Howard Paulson, Mari Robbenolt, Bill O'Connor, and Robert Swanhorst be given individual public reprimands for violating state law. And finally, in order to maintain the integrity of the Open Meetings Law, the Board of Ethics and/or the City Attorney's Office must reveal

the dates when the illegal, secret votes were conducted. As long as these votes remain secret, the Sioux Falls Board of Ethics remains in violation of the Open Meetings Law.

Thank you very much for your careful attention to these remarks.





DAVID A. PFEIFLE
City Attorney
dpfeifle@siouxfalls.org

October 29, 2010

GAIL D. EIESLAND
Chief Assistant City Attorney
geiesland@siouxfalls.org

KAREN A. LEONARD
Assistant City Attorney
kleonard@siouxfalls.org

Office of the Attorney General
300 N. Dakota Avenue, Suite 403
Sioux Falls, SD 57104-6032

224 West Ninth Street
P.O. Box 7402
Sioux Falls, SD
57117-7402
605-367-8880
605-367-7039 TTY
605-367-7330 Fax

Re: Matter of Open Meetings Complaint 10-03, City of Sioux Falls Board of Ethics

Dear Open Meetings Commission Members:

KEITH E. ALLENSTEIN, JR.
Assistant City Attorney
Police and Fire Legal Advisor
kallenstein@siouxfalls.org

This letter is in response to the Complaint filed by Kermit Stagers regarding the City of Sioux Falls Board of Ethics ("the Board") conduct while in executive session during its May 4, 2010 meeting. As current counsel for the Board, I have been authorized to respond on its behalf.

320 West Fourth Street
Sioux Falls, SD
57104-2413
605-367-8880
605-367-7231 TTY
605-978-6676 Fax

The City of Sioux Falls ("City") is a home-rule entity that has adopted its own City Charter pursuant to the Constitution and statutes of the State of South Dakota. The City established the Board to address various rules regarding any conflicts of interest or financial disclosure rules for elected or appointed officials and all other City employees. You have already been provided with City Ordinance Chapter 12 ½, which are the ordinances governing the Board. The Board does not dispute that it is a public body of a political subdivision. By ordinance, the Board shall function in full compliance with state law and City ordinances. The City Attorney's Office for the City of Sioux Falls has provided one of its attorneys to be the legal advisor to the Board.

GARY F. COLWILL
Assistant City Attorney
Human Relations Legal Advisor
gcolwill@siouxfalls.org

224 West Ninth Street
P.O. Box 7402
Sioux Falls, SD
57117-7402
605-367-8745
605-367-7039 TTY
605-367-7330 Fax

After a meeting of the Board had been duly called and noticed on May 4, 2010, the Board properly went into executive session to discuss an issue regarding a Complaint against a particular elected public officer. SDCL 1-25-2. The Board relied upon its then legal advisor, who advised the Board that it could officially vote on the matter while still in executive session. Once then-City Attorney Robert A. Amundson and Chief Assistant City Attorney Gail Eiesland learned of this improper procedure, the legal advisor was immediately removed from that work assignment.

www.siouxfalls.org


Following removal of that legal advisor, the Board has properly conducted all of its subsequent meetings. It has been instructed by this Office that it must take

Open Meetings Commission Members
Page 2
October 29, 2010

any official actions in open meeting. The Board has adhered to this advice in conformity with State law. The City has taken all necessary steps to ensure that this incident never repeats itself. I have personally assumed responsibility as the Board's legal advisor. Please rest assured that this Office did not support nor condone the legal advice that had been provided to the Board for the May 4, 2010, meeting. The necessary steps to rectify the problem have been implemented.


Based on the above, the Board has nothing further to submit to this Commission by way of any oral presentation on November 17, 2010. On behalf of the Board, I would respectfully request a decision be summarily rendered without the need for any oral presentations by the Board or the Complaining Party. Thank you for your careful consideration of this matter.

Sincerely,



David A. Pfeifle
City Attorney

Cc: Kermit Staggers



MINUTES

Thursday, October 28, 2010 at 10:30 AM

Board of Ethics
Special Meeting

Commission Room – First Floor – City Hall
224 West Ninth Street, Sioux Falls, SD



ROLL CALL

BOARD MEMBERS PRESENT: Mike McKnight, Howard Paulson and Mari Robbennolt

BOARD MEMBERS ABSENT: Bob Swanhorst and Bill O'Connor

STAFF PRESENT: David Pfeifle, City Attorney and Cari Hanzel, Recording Clerk

OTHERS/GUESTS PRESENT: Council Members Jamison and Aguilar

Board Chair Mike McKnight called the meeting to order at 10:33 a.m.

APPROVAL OF MINUTES

A motion was made by Mari Robbennolt and seconded by Howard Paulson to approve the minutes from the Special Meeting of August 26, 2010. Three Yeses. Motion carried.

BUSINESS OR ISSUES BROUGHT BEFORE THE BOARD

1. Open Meetings Commission Matter.

David Pfeifle advised the Board of an open meetings complaint filed with the Minnehaha County State's Attorney and subsequently the Open Meetings Commission by Kermit Staggers. The complaint concerned the Board's May 4, 2010 meeting where action was taken by the Board in executive session.

Pfeifle recommended that the Board admit to the violation of the open meetings law with the explanation that it had relied on counsel's erroneous legal advice and that the Board had no intent to disregard state law.

Pfeifle went on to explain the Commission's procedure and the possibility of a public reprimand.

A motion was made by Mike McKnight and seconded by Mari Robbennolt to authorize Mr. Pfeifle to proceed with the admission as Mr. Pfeifle recommended. Three Yeses. Motion carried unanimously.

Pfeifle asked for the Board's permission to appear on the Board's behalf before the Open Meetings Commission should it be necessary to explain the Board's position as previously stated.

Mike McKnight amended his motion to include permission for Dave Pfeifle to appear on the Board's behalf before the Open Meetings Commission should it be necessary to explain the Board's position as previously stated. The amended motion was seconded by Mari Robbennolt. Three Yeses. Motion carried unanimously.

NEXT MEETING

No future meetings scheduled at this time.

ADJOURNMENT

A motion was made by Howard Paulson and seconded by Mari Robbennolt to adjourn. Three Yeses. Motion carried. Meeting adjourned at 10:40 a.m.

Respectfully submitted,

Cari Hanzel
Recording Clerk