

Pursuant to Sioux Falls City Ordinance 35.057, I am requesting an advisory opinion from the Board of Ethics to guide my own conduct as a Sioux Falls City Councilmember.

- Can I create a PAC whose funds will be utilized to support candidates in city elections?
- Can I host fundraisers for candidates in city elections using my title and position as a Sioux Falls City Councilmember?
- Can I use my title as a Sioux Falls City Councilmember to assist candidates in city elections by appearing in a postcard supporting their candidacy?

Past conduct Ordinance 35.057 “A request for an advisory opinion may include the request to review conduct that has occurred that has not been the subject of a complaint to the board...”

4. Did I violate the Sioux Falls Code of Ethics and/or Conflict of Interest Ordinance when as a candidate for city councilmember in 2018, I accepted the following:

- A \$300.00 donation from Theresa Stehly as an individual.
- A robo call supporting my candidacy from Theresa Stehly in her individual capacity.
- Accepted misc. independent contributions from friends of Councilmember Theresa Stehly.

Can I engage activities 1, 2, 3 above as a seated Sioux Falls City Councilmember on behalf of declared candidates during the 2020 election?

The conduct above described is occurring during this and past election cycles. (see attachments)

I am seeking a binding advisory opinion as to whether or not as a Sioux Falls City Councilmember I can engage in the aforementioned activities. Charter 7.01 (b) Board of Ethics... the City Council shall authorize the board to issue binding advisory opinions, conduct investigations, on its own initiative... hire independent counsel.

Charter 7.01 (a) Conflict of Interest; board of ethics.

The use of public office for private gain is prohibited. The City Council shall implement this prohibition by ordinance. Regulations to this end shall include but not be limited to (lists conflicts that must be addressed)...

The appearance of impropriety shall be avoided. Municipal officials shall be at a minimum, restricted from conflicts of interest to the same extent that state public officials are bound by state law; provided however, that the City Council may adopt an ordinance setting a stricter standard.

In response to Sioux Falls City Charter 7.01 recited above, the City of Sioux Falls created a Board of Ethics and established the board’s powers and authority. A model code of professional conduct was adopted by the City which included Canons of Ethics and a Conflicts of Interest and Standards of Conduct ordinance regulating the ethical behavior of city employees and elected officials.

Generally, there are three types of Ethics: 1) professional ethics (doctors/lawyers), 2) government/business ethics, and 3) personal ethics. In government, ethic laws or ordinances generally regulate the following three areas: 1) Financial disclosure, AKA: campaign finance laws, 2) conflicts of interest (voting, appearance of impropriety, use of office or position, etc.) and 3) gifts and honoraria (undue influence).

Chapter 34 Ethics and Chapter 35 Conflict of Interest of Officers and Employees and Ethics Board do address the three areas: financial disclosure, conflict of interest and gifts and honoraria.

The practices that I have requested advice on are primarily concerned with conflicts of

interest regarding appearances of impropriety and use of the position or office.

I believe the relevant sections of the charter and city ordinance are as follows:

34.002 PREAMBLE. The stability and proper operation of democratic representative government depends upon the continuing consent of the governed, upon the public confidence in the integrity of the government and upon responsible exercise of the trust conferred by the people. Government decisions and policy must be made and implemented through proper channels and processes of the governmental structure. The purpose of this code is to establish guidelines for ethical standards of conduct for city council members. City council members must act in a manner that maintains their integrity and independence, yet is responsive to the interests and needs of those they represent. City council members must act in a fair and impartial manner. City council members must be aware of their obligation to conform their behavior to standards of ethical conduct that warrant the trust of their constituents.

3. Charter 7.02 Prohibitions. No city employee shall directly or indirectly contribute money, or anything of value to or render services on behalf of any candidate for nomination or election to any city office.

Elected officials...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.

4. § 34.004 CANON TWO.

(a) A city council member should uphold the integrity and independence of his or her office.

(b) City council members should demonstrate the highest standards of personal integrity, truthfulness, honesty and fortitude in all their public activities in order to inspire public confidence and trust in city government. City council members should participate in establishing, maintaining and enforcing, and should themselves observe, high standards of conduct so that the integrity and independence of their office may be preserved. The provisions of this Code should be construed and applied to further these objectives.

5. 34.005 CANON THREE

(a) A city councilmember should avoid the appearance of impropriety in all his or her activities.

6. § 34.008 CANON SIX.

(a) A city council member should limit his or her extra-governmental activities to minimize the risk of conflict with his or her official duties.

6. 34.009 CANON SEVEN

(a) A city councilmember should refrain from political activity inappropriate to his or her office.

## SUMMARY

The Canons of Ethics and Conflict of Interest ordinances were designed to set the bar high for the ethical conduct of Sioux Falls elected officials. It is important to understand the difference between ethics and law. Law sets the minimum standards for behavior. Ethics sets a higher standard. The Canons of Ethics are designed to “inspire public confidence and trust in city government.” § 34.004 CANON TWO.

In addition, “City Council members must be aware of their obligation to conform their behavior to standards of ethical conduct that warrant the trust of their constituents.” §34.002

It is important for the public to appear before a body they believe is going to be impartial, fair, objective, and make a decision based on the merits. The purpose of restrictions on participation, conflicts of interest, use of office to secure advantages for themselves or others, and undue influence, are designed to achieve these objectives.

The questions I have raised request advice on anticipated activities designed to influence the outcome of city elections. I understand that legitimate political contributions are not gifts “§ 35.053 (1) and financial disclosure laws must be scrupulously complied with § 34.009 (c) (1). While receipt of lawful campaign contributions by an elected official is permitted under the undue influence/gifts portion of ordinance the conduct associated with the gifting is still subject to the conflict of interest portions of the ordinance which regulates the conduct/behavior of the elected official and must also be strictly complied with.

My focus is on Conflicts of Interest which also must be scrupulously complied with §34.008 (b) and that “a city councilmember should limit his or her extra governmental activities to minimize the risk of conflict with his or her official duties. §34.008 (a) Conduct associated with my efforts to influence the outcomes of city elections by donating, fundraising, soliciting, endorsing, using my title as Sioux Falls City Councilmember per attachments A, B & C may subject me to ethical scrutiny under Canons 2-7 and Conflicts of Interest ordinances §35.054 (d) and (e) .

Specifically, I am requesting advice on the following:

1. Whether participating in the above stated activities per attachments A, B and C creates an “appearance of impropriety” pursuant to §34.005 Canon Three (a): A City Council member should avoid impropriety and the appearance of impropriety in his or her activities.
2. Whether the above stated activities per attachments A, B and C are inappropriate political activities pursuant to §34.009 Canon Seven (b): A city council member should refrain from political activity inappropriate to his or her office.
3. Whether the above activities per attachments A, B & C grant special advantage to an individual(s) and/or use my elected position to secure special advantage to others, pursuant to Conflict of Interests §35.054 Standards of Conduct; City Councilmember (d) and/or (e).
  - (d) Grant any special consideration, treatment or advantage to any citizen, individual, business organization or group beyond that which is normally available to every other citizen, individual, business organization or group;
  - (e) Use their elected position to secure special advantages, privileges or exemptions for themselves or others;
4. As to 1, 2 and 3, past conduct, I am requesting an opinion on whether those activities were permitted because they were performed in the office holders’ individual capacity or whether they are subject to Canon Three (a), Canon Seven (b) and §35.054 (d) & (e) stated above.

The level of involvement of city elected officials in this current election cycle is unprecedented. I cannot assume these practices are ethical just because they are occurring now or have occurred in the past. I am requesting a binding advisory opinion to guide my anticipated conduct in this and future elections.