

	<p>Tuesday October 6, 2020 9:00 A.M.</p>	<h1>AGENDA</h1>
	<p>Commission Room 1st Floor ~City Hall 224 W. Ninth Street Sioux Falls, SD 57104</p>	<p>Board of Ethics Meeting</p>

1. CALL TO ORDER

2. APPROVAL OF MEETING MINUTES FROM AUGUST 26, 2020 (ATTACHMENT 1)

3. PUBLIC INPUT

4. ANY UNFINISHED BUSINESS OR PENDING ISSUES TO BE BROUGHT BEFORE THE BOARD.

A. REQUEST FOR ADVISORY OPINION (20-3) FILED SEPTEMBER 8, 2020 (ATTACHMENT 2)

B. REQUEST FOR INVESTIGATION (ATTACHMENT 3)

5. ADJOURNMENT

BOARD OF ETHICS MEMBERS:

Jack Marsh, Chair
Sue Roust, Vice Chair
Greg LaFollette
Wanda Harris
Dan Fritz

CITY STAFF:

Stacy Kooistra, City Attorney
Bonnie Woolam, Paralegal/Board Liaison

If an ADA accommodation is needed, please contact the Human Relations Office at 367-8745 or humanrelations@siouxfalls.org at least 12 hours in advance of the meeting

	Wednesday, Aug. 26, 2020 at 9:00 a.m.	<h1>MINUTES</h1>
	Commission Room 1 st Floor, City Hall 224 W. Ninth Street Sioux Falls, SD 57104	<h2>Board of Ethics Meeting</h2>

BOARD MEMBERS PRESENT: Jack Marsh, Sue Roust, Greg LaFollette, Wanda Harris, Dan Fritz.

BOARD MEMBERS ABSENT: None

STAFF PRESENT: Bonnie Woolam, Recording Clerk

BOARD ATTORNEY: Alan Peterson

CALL TO ORDER

Chairman Jack Marsh called the meeting to order at 9:00 a.m. The clerk took the roll and all members of the Board of Ethics were present. The Chair acknowledged a quorum and the meeting proceeded.

Chairman Marsh explained that the draft meeting minutes under consideration covered three sessions dealing with Complaint 20-B. Marsh suggested two revisions to the minutes, on page 5 of the minutes for Tuesday, Aug. 11, 2020. Marsh read the changes.

The Chair invited a motion to approve the minutes as amended. Motion by Dan Fritz; seconded by Sue Roust. No discussion. Vote to approve: 5 Yes. 0 No. Motion approved.

PUBLIC INPUT WAS CALLED WITH A 5-MINUTE TIME LIMIT PER PERSON

- John Cunningham addressed the Board
- Councilor Greg Neitzert addressed the Board
- John Cunningham addressed the Board a second time
- Councilor Janet Brekke addressed the Board
- John Cunningham addressed the Board a third time

BUSINESS OR PENDING ISSUES BROUGHT BEFORE THE BOARD

Chair Marsh acknowledged receipt on Aug. 20 of City Council’s Aug. 18 remand and request for clarity on the report submitted to City Council by the Board of Ethics on Aug. 11, 2020. Chair Marsh stated that it was his understanding that the Board’s report concluded the Board’s consideration of

Complaint 20-B and that jurisdiction had transferred from the Board of Ethics to the City Council as of Aug. 11.

Board members concurred that an executive session was not necessary to consult with legal counsel and to consider the remand from City Council.

The meeting continued in open public session.

Board Attorney Alan Peterson cited 35.058(c) of the complaint procedure. The Board discussed its obligations and responsibilities under the ordinance as well as options available to the Board in response to the questions posed by City Council. The issue of confidentiality of prior proceedings and documents was discussed, in light of the waiver of confidentiality from the accused, Councilor Greg Neitzert, received by letter on Aug. 24, 2020. Board counsel advised that the Board could choose to answer the questions posed but was not required to do so.

Board members discussed the Council's remand of 20-B and the questions posed. The board reached consensus that answers to the questions were included in the Board's original report of Aug. 11 and that further elaboration was unnecessary. Furthermore, following discussion, the board reached consensus that Chapter 35, Code of Ordinances, explains the processes for handling and disposition of Complaint 20-B by City Council, including the recommendations and findings forwarded by the Board of Ethics.

Chair Marsh recognized Greg LaFollette for a motion.

Greg LaFollette moved: The Sioux Falls Board of Ethics hereby returns City Council's remand with a comment that the Board's report stands as submitted. Motion died for lack of a second.

Chair Marsh recognized Wanda Harris for a substitute motion. Moved by Wanda Harris; seconded by Sue Roust: The Sioux Falls Board of Ethics hereby responds to City Council and recommends review of the Board's previously submitted official report for answers to the questions posed. The Board of Ethics further recommends that the Council review Chapter 35, Code of Ordinances, Sioux Falls, for guidance pertinent to the Council's jurisdiction over and disposition of this matter.

There was further discussion. LaFollette called the question. Chair Marsh directed the clerk to take a roll call vote on the motion.

Dan Fritz	Yes
Sue Roust	Yes
Greg LaFollette	Yes
Jack Marsh	Yes
Wanda Harris	Yes

Vote to Approve: 5 Yes. 0 No. Motion approved.

The matter was referred back to Sioux Falls City Council. (Note: Following the meeting, Chair Marsh sent a letter (copy attached) to City Council, informing City Council of the Board's action. The letter was delivered to the City Clerk's Office on the same day, Aug. 26.)

Greg LaFollette moved to adjourn; seconded by Sue Roust
Vote to adjourn: 5 Yes. 0 No. Motion approved. Meeting adjourned at 10:14 a.m.

NEXT MEETING

Not set.

Respectfully submitted,

Bonnie Woolam
Recording Clerk

DRAFT



**City of Sioux Falls
Board of Ethics
Request for Advisory Opinion**

Name of Individual Requesting Opinion: Janet Brekke
 Address: 5008 S. Pennbrook Ave., Sioux Falls, SD 57108
 Telephone Number: (605) 359-7467
 Email Address: jbrekke@siouxfalls.org

Statement of the situation giving rise to the request for an advisory opinion. Include names of individuals, locations, and dates, as applicable.

Please see attached.

Please be advised that the Board of Ethics may hear and discuss requests for advisory opinions in executive session only to the extent allowed by law. Even if an executive session is allowed, the Board must take any final action on the matter in a public meeting, where they must reveal your name and the general substance of your inquiry. If you have any pertinent and sensitive details to your inquiry that you wish to remain confidential, please share them with the Board during a possible executive session rather than placing them on this form or stating them in an open meeting of the Board.

I request that this information be kept confidential: Yes _____ No ✓

The information provided is true to the best of my knowledge and belief.

Signature: Janet F. Brekke 9/8/20
 Date

Received by: Quann Foster 9/8/20
 Date

Please return completed form to the City Attorney's Office.

I am requesting an advisory opinion pursuant to City 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."

The conduct that I am requesting be reviewed is as follows:

There have been two Ethics Complaints filed with the Ethics Board. Complaint 20A and Complaint 20B. I had no involvement with the filing of either of those complaints. I had no contact with the Complainant with regard to Complaint 20A. As to Complaint 20B I did talk to the Complainant on approximately four occasions. Each conversation was to answer a question(s) as to proper procedure regarding City Ordinance or Ethics Board Rules. The Complainant told me that neither the Board or the City Attorney would answer his procedural questions. The subjects we spoke about were sufficiency, jurisdiction, probable cause, burden of proof, subpoena of witnesses and supplemental filings. I never appeared at any hearing on the complainant's behalf and I never discussed legal strategy or advocated for the complainant. I avoided discussions on the merits of the case. I never discussed the content of my discussions with the Complainant to anyone. The night the City Council received the report and assumed jurisdiction I disclosed these communications publicly which is the practice of the City Council when we are serving in a quasi-judicial capacity. I immediately stopped all communication with the Complainant. I have had these types of discussions with numerous citizens over the years on all types' municipal government legal and procedural questions. Pursuant to City Ordinance 34.009 Canon Seven (b) "City councilmembers have a civic responsibility to support good government by every available legal and ethical means, to continue to inform and educate the citizenry about the affairs and processes of government, and to make themselves available to citizens of the city so that they may ascertain and respond to the needs of the community... "

Since the City Council assumed jurisdiction I have received multiple improper ex parte communications from the accused which are attached. These communications have not been ccd to the complaining party's attorney. I have not responded to any of them. As a remaining council member, I am now in an adjudicatory position on the council as it proceeds to a public hearing. I would like your advice on whether my procedural conversations violated any sections of City Ordinance 35.053 Conflicts of interest. The hearing is being set for this Thursday evening.

From: Neitzert, Greg <GNeitzert@siouxfalls.org>
Sent: Tuesday, September 1, 2020 9:06 AM
To: City Council <CityCouncil@SIOUXFALLS.org>
Cc: TenHaken, Paul <pth@siouxfalls.org>; Kooistra, Stacy <stacy.kooistra@siouxfalls.org>
Subject: Consent agenda item - City Council attorney retainer

****Please do not reply all****

Dear colleagues:

At tonight's council meeting, the consent agenda for contracts and agreements contains a retainer for Frieberg, Nelson & Ask, LLP, to provide legal assistance to the Sioux Falls City Council. This is related to the City Attorney's recusal from a public hearing related to the ethics violation complaint filed against me.

Although not legally required, I believe it is appropriate that I not participate in the discussion or voting on this item. As a result, I will pull this item from the consent agenda and I will be recusing myself from this matter.

In the spirit of preserving the public's trust in the council and honoring our code of ethics to act impartially, I also encourage Councilors Brekke and Starr to recuse themselves as well.

Thank you.

Greg Neitzert

City Councilor - Northwest District

Phone: 605-367-8109 (rings directly to my cell)

Cell: 605-929-9118

Email: GNeitzert@siouxfalls.org



From: Neitzert, Greg <GNeitzert@siouxfalls.org>

Sent: Monday, September 7, 2020 3:42 PM

To: Brekke, Janet <JBrekke@siouxfalls.org>; Starr, Pat <PStarr@siouxfalls.org>

Cc: matt@redstonelawfirm.com; tfrieberg@frieberglaw.com; rpeterson@lynnjackson.com

Subject: Recusal request

Councilors Starr and Brekke:

As you are aware, on Thursday, Sept. 10, 2020, the City Council will meet in a special session to hear the Board of Ethics report regarding my 2019 policy education trip. At the Tuesday, Sept. 8, 2020, City Council meeting, the Council agenda includes items related to the hearing.

Please consider this my official request for each of you to voluntarily recuse yourselves from all discussion and action related to Ethics Board Complaint 20-B. Given your involvement with the complainant, John Cunningham, you have disqualified yourselves from participating in this quasi-judicial proceeding based on state law and precedent set by the South Dakota Supreme Court.

Because specific procedures, motions and requests for subpoenas will be heard tomorrow at our 7 p.m. meeting, I need your written confirmation of recusal by 12 noon tomorrow. You will need to respond to this email as well as send an email to the entire Council confirming your intent to recuse yourself from these proceedings.

Your voluntary recusal from this matter will allow the eligible council members to focus on the allegations rather than the coordination behind the complaint.

The integrity of the City Council is vital, and my hope as council chair is for a united council to address our city's pressing issues, not factions that spend their energy on tearing others down instead of improving our community.

Thank you for considering this request and I look forward to your prompt response.

Greg Neitzert

City Councilor - Northwest District

Phone: 605-367-8109 (rings directly to my cell)

Cell: 605-929-9118

Email: GNeitzert@siouxfalls.org





From the desk of:

Matthew S. McCaulley
matt@redstonelawfirm.com
605.444.2816 (direct)

 redstonelawfirm.com

320 E. Capitol Avenue
Second Floor, Entrance B
Pierre, SD 57501

 **605.331.2975**

101 N. Phillips Avenue
Suite 402
Sioux Falls, SD 57104

August 27, 2020

VIA ELECTRONIC MAIL ONLY

Stacy Kooistra, City Attorney
City of Sioux Falls
224 W. Ninth Street
Sioux Falls, SD 57104

Re: *Ethics Complaint No. 20-B*
Our File No. 13539.0000

Dear Mr. Kooistra:

This law firm represents Sioux Falls City Council Member Greg Neitzert relative to Ethics Complaint No. 20-B. This letter will serve as our request for your immediate action to preserve any physical files as well as any electronic files and other data contained in or stored on any electronic device (including, without limitation, desktop computers, laptop computers, servers or cell phones).

Evidence that must be preserved includes, but is not limited to:

1. Any documentation related to the City's proceedings in Ethics Complaint Nos. 20-A and 20-B (the "Complaints"), including emails, voicemails, letters, meeting notes and staff notes.
2. Any documentation related to travel by past and current elected City officials and City employees to conferences, conventions, meetings, or other engagements in which the event involved third-party sponsors (including any travel where the City was a "member" of such organization).
3. Any documentation of travel related to City business by members of the City Council.
4. Any emails, text messages, or other correspondence between Pat Starr and Janet Brekke regarding:
 - a) The Complaints;

- b) Councilor Greg Neitzert and his attendance at the Community Leaders of America Conference in October 2019;
 - c) Councilor Greg Neitzert and the Sioux Falls Board of Ethics; and
 - d) John Cunningham.
5. Any voicemails or recordings of conversations between or among Pat Starr, Janet Brekke and/or John Cunningham relative to:
- a) The Complaints; or
 - b) Councilor Greg Neitzert and his attendance at the Community Leaders of America Conference in October 2019.
6. Any video or audio recordings of Board of Ethics meetings in 2020, including security camera footage of the meeting site buildings.
7. Any video or audio recordings of other public meetings in which City Council members or City employees discussed information learned at sponsored events such as luncheons, conferences and conventions.
8. Any records relative to the email attached hereto as Exhibit A, including logs or other evidence that would show communication between a recipient of that email and John Cunningham.

The City of Sioux Falls, its officers, employees, agents, insurers and affiliated organizations should take all reasonable steps to preserve any electronically stored information ("ESI") relative to the Complaints, including:

- A. Suspending your electronic and paper document and data destruction policies and backup tape recycling policies;
- B. Preserving relevant software, including legacy software (unless an exact copy or mirror image is made and stored) and hardware that is no longer in service but was in service during the relevant time period;
- C. Retaining and preserving necessary information to access, review and reconstruct (if necessary) relevant electronically stored information, including identification codes and passwords, decryption applications, decompression software, reconstruction software, network access codes, manuals and user instructions;
- D. Retaining all backup tapes or other storage media; and

- E. Any other reasonable steps necessary to prevent the destruction, loss, override, or modification of relevant data, either intentionally or inadvertently, such as through modification of your document retention policy and systems.

This request also applies to preservation necessary for any hearing by the City Council or other entity of the City regarding the Complaints.

The lists provided in this letter are not exhaustive, and you must preserve all information that is potentially relevant to the allegations in the Complaints. All ESI must be preserved intact and without modification.

All of the above are relevant to issues that may arise in a possible hearing before the City Council, specifically (but without limitation) the frivolous nature of the Complaint(s) according to the criteria set forth in § 35.009(c)(1) through (c)(6) and disqualification of one or more City Council members (see SDCL 6-1-21) who may be seated in a quasi-judicial capacity.

Sincerely,

REDSTONE LAW FIRM LLP



Matthew S. McCaulley

Digital signature used to expedite transmission

MSM/seo
Enclosure

cc: Thomas Greco, City Clerk (via email w/enc.)
Alan Peterson, Special Legal Counsel to the Board of Ethics (via email w/enc.)
City Council (via email w/enc.)

Subject: Conference
Date: 2019-10-17 15:08:03
From: Neitzert, Greg
To/Cc: Neitzert, Greg
Bcc: - DBixler@siouxfalls.org;
 CityCouncilManagers@siouxfalls.org;
 smnelson@siouxfalls.org;
 CityCouncilManagers@siouxfalls.org;
 JDavid@siouxfalls.org;
 CityCouncilManagers@siouxfalls.org;
 TGreco@siouxfalls.org;
 CityCouncilManagers@siouxfalls.org;
 smnelson@siouxfalls.org;
 CityCouncilManagers@siouxfalls.org;
 TGreco@siouxfalls.org;
 CityCouncilManagers@siouxfalls.org;
 JDavid@siouxfalls.org;
 CityCouncilManagers@siouxfalls.org;
 DBixler@siouxfalls.org;
 CityCouncilManagers@siouxfalls.org;
 RKiley@siouxfalls.org; CityCouncil@SIOUXFALLS.org;
 CErickson@siouxfalls.org;
 CityCouncil@SIOUXFALLS.org; TStehly@siouxfalls.org;
 CityCouncil@SIOUXFALLS.org;
 MSelberg@siouxfalls.org;
 CityCouncil@SIOUXFALLS.org;
 CityCouncil@SIOUXFALLS.org; PStarr@siouxfalls.org;
 CityCouncil@SIOUXFALLS.org; CSoehl@siouxfalls.org;
 CityCouncil@SIOUXFALLS.org;
 JBrekke@siouxfalls.org; CityCouncil@SIOUXFALLS.org


[View Source](#)
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Just a note to all of you as an FYI I am at a national conference of Mayors and City Councilors in Frisco, TX (suburb of Dallas, TX and home of the Dallas Cowboys NFL team). It is called the Community Leaders of America, which is a nonprofit foundation. I arrived very early Wednesday morning and leave Friday.

I wanted to make sure to note and be clear, I was invited by them, as was Mayor TenHaken, to attend. My understanding is they heard I was a 'policy' person, so they thought I would be a good person to invite (I guess) from our Council. They may invite other Councilors to future sessions as they like to mix it up and help spread knowledge to community leaders. Since they bear all the costs, they can only invite so many people each time around.

They booked all of it and paid all costs. Nothing was booked or coordinated by the city, our Council office, no city funds, resources, or staff time was involved, and there is no travel forms or city reimbursement. I worked directly with the organization that took care of everything and sent me the hotel and flight reservations.

They consider themselves a similar concept to the National League of Cities, and so far it has been, just on a smaller scale. We have heard speakers from various national firms that provide services that cities could use, and also we have had sessions all day on various topics, including sessions where Mayors and other leaders are talking about a problem in their city and how they tackled it. Topics have included marijuana legalization in Colorado and how it has created city challenges, Innovation and how it is being done in cities, homelessness and

08-24-2020

Jack Marsh
Sioux Falls Board of Ethics
224 W Ninth Street
Sioux Falls, SD 57104

Re: Ethics complaint 20-B

Dear Chairman Marsh:

Thank you for the time and attention you and the fellow members of the Board have given to the frivolous and politically-motivated complaints filed against me this year.

Unlike the complainant, John Cunningham, I have honored the confidentiality rules of the process per Chapter 35 of Sioux Falls City Ordinances. Accordingly, I hereby:

- A. Waive confidentiality pertaining to Ethics complaints 20-A and 20-B and elect to make those complaints public in accordance with the right granted to me under § 35.058 of City Ordinances;
- B. Respectfully request the Board of Ethics publicly disclose all information received, discussed or decided in both of these matters, including any discussions held during executive sessions; and
- C. Respectfully request the Board of Ethics release the details of the "additional investigation" and "additional research" referred to on the bottom of page one of its August 11, 2020 report.

Because of the unauthorized and unethical actions of the complainant, the public knows the identity of the accused and the event in question. Despite these due process violations following a frivolous complaint, the public should be able to know all of the facts and I should be able to defend myself without qualification or restriction.

Since the first frivolous complaint was filed, I have taken the high road during this politically coordinated attack. There is clear evidence of a timed and coordinated attack against my character for the purposes of defeating me in my reelection effort. Councilors supporting the named accuser in this matter publicly endorsed my political opponent in my recent race for reelection to the City Council.

While these efforts were unsuccessful in defeating me in the June 2020 election, the coordination to embarrass or punish me continues to this day. It is disappointing to see my colleagues on the City Council spend their time and energy for their own political gain and to attack a fellow member of the Council based on personal grudges. The public deserves better from Councilors Brekke and Starr -- as taxpayers expect their elected officials to make progress and focus on goodwill, not tearing down others in an effort to lift themselves up.

I am thankful the Board agrees that the current ordinance needs clarification, and that the Council should review its policies and revise city ordinances to provide more clarity going forward.

08-24-2020

As I review the August 11 written decision of the Board, I want to make five observations:

1. Both complaints in this matter (which are nearly identical) were filed by a political opponent and prior to an election in which my name appeared on the ballot.
2. The Board did not identify the accused by name in its public report to the City Council, and repeatedly stated that ordinance and policies should be discussed, not the actions of one individual. The Board's intent was and is clear - that the Council should update policies, not sanction or single out one individual.
3. With this matter now on remand to the Board, findings "b", "c", "d" and "e" do not support a public hearing of me as the accused - with the Board acting as a quasi-prosecutor. That's not the policy discussion envisioned by the Board.
4. A public hearing would only do exactly what the Board made clear it did not intend (unfairly single out an individual stated in finding "d") for a common practice, based on an ordinance that is too vague to give clear guidance to those which it governs.
5. A public hearing would only serve to allow the further political weaponization of the ethics process, provide another venue for coordinated attacks against a single individual, and encourage future politically motivated, coordinated, and timed attacks.

I urge the Board not to set this precedent nor be party to this attack -- an attack that has been leaked to the press by the complainant with continued coordination between the named accuser and the two City Councilors supporting him.

It is time to immediately dismiss this matter and refocus this discussion so the City Council can adopt clarifying language in policy and ordinance. Should the Board now decide to move forward to a public hearing, I am prepared to vigorously defend myself and expose the coordination of my colleagues as it relates to this matter.

The integrity of the process hangs in the balance. I urge you to make the right decision.

Sincerely,



Greg Neitzert, City Councilor - Northwest District

Copy to:

City Council (via email only)

John Cunningham (via US Mail)

Mayor TenHaken (via email only)

Stacy Kooistra, City Attorney (via email only)

Alan Peterson, Special Legal Counsel to the Board of Ethics (via email only)

Ethics Complaint - Gifts of Travel
David Zokaites
September 10, 2020

- 1) To assure honest government, elected officials and government officers should not accept gifts or bribes.
- 2) The promotion of honest government has been codified into Sioux Falls ordinance. City ordinance 35.029 "Acceptance of gifts and other things of value" includes (a) "No officer or employee shall directly or indirectly solicit any gift, or accept any gift whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise or any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence, or could reasonably be expected to influence the officer or employee, in the performance of official duties, or was intended as a reward for any official action."
- 3) There is an ongoing ethics problem in Sioux Falls city government that needs to be resolved: the above named ordinance has reportedly been violated repeatedly.
- 4) I have publicly asked Sioux Falls City Council (including our mayor) to report their last two years of third party paid travel. I made this request/recommendation because I support transparency in government and because I value acknowledgement, acceptance, and forgiveness over denial and pride.
- 5) I made this public request for transparency on August 18, 2020 and September 1, 2020 during public input at city council meetings. My PowerPoint slides for these two (and one more) public input presentations are attached. For the sake of completeness, I have attached PowerPoint slides for all three of my council presentations regarding ethics.
- 6) To my knowledge, City Council (and the mayor) have taken no action in response to my request for transparency.
- 7) I am issuing this complaint to prompt public disclosure of third party paid travel by important city officials.
- 8) In 2022, I plan to campaign for mayor of Sioux Falls. I did not file this complaint to support my campaign but to promote transparent government. Indeed, filing this complaint might hurt my election chances in politically conservative Sioux Falls. Nonetheless, my desire for better government is strong enough to justify the personal political risk.
- 9) The ethics board wrote a letter to City Council dated August 11, 2020. Paragraph c on page 3 of this letter states with regard to third party paid travel, "the practice appears to be common" for "City officers". In other words, the ethics board wrote that city officials (or officers) regularly exhibited illegal unethical behavior.

10) I do not know which public officials participated in the common practice of accepting third party paid travel and have no firsthand knowledge of the practice. I am basing this complaint solely on the above-mentioned ethics board letter.

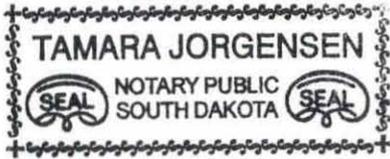
11) I urge the ethics board to investigate and publicly disclose all third party paid travel by Sioux Falls city officials (and officers) over the last two years. This is the essence of my complaint: to uncover and disclose third party paid travel so that we the people may have greater confidence in our city government.

12) All parts of this complaint and the ensuing investigation should be public.

David Zokaites

David Zokaites

David Zokaites
2215 East Mulberry Street
Sioux Falls, South Dakota 57103
605-251-0691



Tamara Jorgensen
Notary Public
expires: 2/20/26

More Useful Ethics Board

David Zokaites
March 10, 2020



Friday's Ethics Board Meeting

- Implied if it's legal, it's ethical
- Don't like to provide opinions on hypothetical scenarios

The Mandate

- City ordinance 35 "Conflicts of interest of officers and employees and ethics board"
- Section 35.027 "Advisory opinions may be requested ... seeking advice about his or her current conduct or an anticipated future behavior"
- Section 35.034 "An advisory opinion may be requested ... to interpret the law ..."
- Section 35.058 "Anonymous complaints shall not be considered."

Problems, Solution

- Ignoring anonymous complaints discourages reporting
- Ordinance does not mention morality, ethics
- Board pretends law is ethics
- Ethics board does not review ethics
- Board does not like to review hypothetical plans
- Misleading political theater
- Please update or repeal ordinance 35

Ethics Advisory Board Should

- Provide opinions on:
 - Legality
 - Ethics
 - Past events
 - Considered actions

Smile About Beauty



Agenda Item ^[11]37, Political Gifts David Zokaite August 18, 2020



Basic Issue

- Ethics advisory board investigated a complaint
- Was councilor's paid travel unethical?
- Complaint received before the summer election
- Finding was delayed until after election
- Delay itself probably unethical

Ethics Board Findings

- Letter dated August 11, 2020
- With regard to third party paid travel, "the practice appears to be common"
- "The facts here do not warrant individual sanction"
- Travel gifts should be publicly pre-approved

Impact of Findings

- Accepting paid travel was OK because everyone did it – not
- Ethics board approves unethical conduct
- Recommending public pre-approval of travel gifts is a distraction
- When would a gift of travel ever be ethical?
- Ethics board delay appears unethical

City Law

- 35.053 Conflicts of interest; City council members
- "City officials shall not ... accept any gift whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence, or could reasonably be expected to influence the officer, in the performance of their official duties ..."
- Don't accept gifts or bribes

Recommendations

- Don't accept industry gifts
- City should pay for seminars, travel
- Respect city ordinance
- Council, mayor should report their paid travel from the last 2 years

Ethics Issues

David Zokaite

September 1, 2020



Ordinance Continued

- 35.028 "Conflicts of interest ..."
- (a) "No officer or employee of the city shall knowingly have a financial interest clearly separate from that of the general public"
- Good government principle

City Law

- Law to promote ethics, investigations
- Chapter 35, Conflicts of interest of officers and employees and ethics board
- Seems like a great idea

Discouraging Complaints 1

- 35.009 Complaints
- (a) "All complaints shall be **sworn to by a notary public**"
- Barrier to filing a complaint
- Discourages ethics complaints
- Criminal complaints have no such barrier
- Requirement for notary should be removed

Clear Ordinance

- 35.029 "Acceptance of gifts and other things of value"
- (a) "No officer or employee shall directly or indirectly solicit any gift, or accept any gift whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise or any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence, or could reasonably be expected to influence the officer or employee, in the performance of official duties, or was intended as a reward for any official action."

Discouraging Complaints 2

- 35.009 Complaints
- "Complaints shall describe in detail the act or acts complained of and the specific section(s) of the **respective subchapter in this chapter** that have been allegedly violated."
- Shouldn't need detailed law knowledge to make a complaint

Discouraging Complaints 3

- 35.009 Complaints
- (c) "any person who files a frivolous complaint with the board shall be **civilly liable** ..."
- Frivolous may be due to:
 - (1) "The timing of the complaint"
 - (2) "publicity"
 - (3) "any relationship between the accused and the complainant"
 - (6) "the complainant's motives"

Ethics Problems 3

- Contacted South Dakota Division of Criminal Investigation, asked for an investigation
- They ignored me – no surprise
- <https://atg.sd.gov/OurOffice/Departments/DCI/contact.act.aspx>
- Phone: (605) 773-3331
- Email: atghelp@state.sd.us

Ethics Problems 1

- City officials "commonly" received third party paid travel (per ethics board letter)
- This violates city ordinance 35
- Officials did not recuse during August 18, 2020 council meeting that discussed paid travel
- Also violates city ordinance
- Taints mayoral, city council decisions

Recommendations

- Ordinance should be improved
- Council, mayor should report last two years of third party paid travel
- Support transparency
- Acknowledgement, acceptance, and forgiveness over denial and pride

Ethics Problems 2

- Councilor's private disclosure still private
- Ethics board recommended no disclosure, no sanction
- Council voted "I don't want to know" during 8/18 meeting
- Looks like a coverup

Enjoy Beauty

