

MINNEHAHA COUNTY OFFICE OF THE STATE'S ATTORNEY

Daniel K. Haggard
State's Attorney

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January 26, 2022

Sierra Broussard
P.O. Box 2913
Sioux Falls, SD 57101

Re: Open Meetings Complaint regarding Sioux Falls City Council

Dear Ms. Broussard:

This Minnehaha County State's Attorney's Office is in receipt of your materials, including an affidavit dated November 22, 2021, in which you allege that the Sioux Falls City Council ("City Council") has violated open meetings laws. Specifically, you allege that the City Council conducted its regular meeting on Tuesday, November 16, 2021, without allowing public input on Agenda Item 7 (Sub-Item 18 which had been removed from the Consent Agenda) and Agenda Item 12 (from Exhibit C which had been removed from the Consent Agenda).

According to your complaint, the two items mentioned above were acted upon by the City Council without permitting public input for all items "on the regular agenda" as required "under the laws of the state of South Dakota, city of Sioux Falls ordinances, procedures and Robert's Rules of the body." (§55 of your Affidavit).

The public comment requirements as found in state law are contained in South Dakota Codified Law (SDCL) 1-25-1:

The public body shall reserve at every regularly scheduled official meeting a period for public comment, limited at the public body's discretion, but not so limited as to provide for no public comment. At a minimum, public comment shall be allowed at regularly scheduled official meetings which are designated as regular meetings by statute, rule, or ordinance.

The public input requirements as found in the Code of Ordinances of Sioux Falls, South Dakota, are contained in §30.015:

(a) Public input shall be allowed for any item on the regular agenda. Each person addressing the city council shall step up to the microphone in front of the rail, shall give his or her name in an audible tone of voice for the record, and unless further time is granted by the presiding officer, shall be limited to three minutes on any ordinance receiving a first reading; and on the date of final adoption by the

city council, five minutes shall be allowed. The city council has the right to overrule the presiding officer's use of discretion pursuant to *Robert's Rules of Order Newly Revised* (latest edition).

(b) Notwithstanding division (a) above, the general public input portion of a city council meeting, held pursuant to § 30.001(b) will be limited to topics which do not involve those agenda items appearing earlier in the regular agenda as public input shall be received when that agenda item is up for discussion. Each person addressing the city council during the general public input portion shall be limited to three minutes.

(c) No person shall address the city council without first securing the permission of the mayor, or acting mayor, to do so.

(d) Electronic presentations with audio and video embedded within the electronic presentation shall not be allowed. Electronic presentations without audio and video embedded within the electronic presentation are only permitted during regular agenda items on the date of final adoption. The city council may adopt standards that govern the use of electronic presentations. This provision shall not be construed to restrict electronic or hardcopy photos from being presented by the public during a regular meeting.

(e) All remarks shall be addressed to the city council as a body and not to any member thereof.

(f) No person, other than the city council and the person having the floor, shall be permitted to enter into any discussion, either directly or through a member of the city council without the permission of the mayor or acting mayor.

(g) No question shall be asked of a city council member except through the mayor or acting mayor.

(h) No person, except city council members, shall address the council after a motion is made and seconded unless requested by a city council member.

Before weighing the merits of the allegations raised, the Minnehaha County State's Attorney's Office must first determine whether it in fact has the authority under state law to address the particular allegations raised in your affidavit. This office's authority in these matters is granted and defined in SDCL 1-25-6:

If a complaint alleging a violation **of this chapter** is made pursuant to § 23A-2-1, the state's attorney shall take one of the following actions:

- (1) Prosecute the case pursuant to Title 23A;
- (2) Determine that there is no merit to prosecuting the case. Upon doing so, the state's attorney shall send a copy of the complaint and any investigation file to the attorney general. The attorney general shall use the information for statistical purposes and may publish abstracts of such information, including the name of the government body involved for purposes of public education; or

(3) Send the complaint and any investigation file to the South Dakota Open Meetings Commission for further action.

(emphasis added).

A. Alleged violation of State Law – SDCL Chapter 1-25

While you alleged violations of state law you have also acknowledged that the City Council did afford you (and the general public) an opportunity to present public input during the meeting. (¶66 of your Affidavit). This opportunity for public input/comment appears to satisfy the requirements of SDCL 1-25-1. Therefore, our office has determined it does not appear that a violation of state law has occurred.

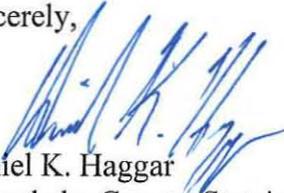
B. Alleged violation of City Ordinance, procedures and Robert's Rules

It appears that your allegation, i.e., a lack of public input on each item on the regular agenda, is actually asserting a violation of §30.015 of the Code of Ordinances of Sioux Falls, South Dakota. As set forth above, SDCL 1-25-6 limits the authority of this office to complaints alleging violations "of this chapter," i.e, SDCL Chapter 1-25. There is no language within SDCL Chapter 1-25 which allows the Minnehaha County State's Attorney's Office to reach all open meeting complaints alleging violations of municipal ordinance or procedure (including Robert's Rules), including complaints based on a municipal ordinance which may provide more protection than state statute. Therefore, this office cannot exercise a power that is not in fact affirmatively delegated to it by the Legislature.

Without any such specific statutory directive from the Legislature, this office finds it is without authority under state law to take any action defined in SDCL 1-25-6 upon receipt of a complaint of a city ordinance violation, even one related to open meetings, as the acts alleged would not be a violation of chapter 1-25. As this office has no authority to act on an allegation that a violation of the Code of Ordinances of Sioux Falls, South Dakota, occurred - this office also declines to reach or comment on the merits of the complaint.

Given the statutory limitations set forth above and in light of your requests (¶¶ 75 and 76 of your Affidavit) regarding my and my office's involvement in this matter, I recognize that the statutory limitations may be viewed as the equivalent of a refusal to prosecute or refer the matter to the Open Meetings Commission. Therefore, a copy of this letter will be forwarded to the Attorney General's Office for statistical and any other lawful purposes, consistent with SDCL 1-25-6(2).

Sincerely,



Daniel K. Haggar
Minnehaha County State's Attorney
Cc: Jason Ravensborg, South Dakota Attorney General