

MINUTES	Thursday, August 7, 2014 at 3:00 p.m.	 CITY OF SIOUX FALLS
BOARD OF ETHICS REGULAR MEETING	Commission Room 1st Floor ~ City Hall 224 West Ninth Street Sioux Falls, South Dakota	

BOARD MEMBERS PRESENT: Jeff Gednalske, Greg LaFollette, Ron Sisk and Bob Swanhorst

BOARD MEMBERS ABSENT: Carol Knudtson

STAFF PRESENT: Dave Pfeifle, Sioux Falls City Attorney and Cari Hanzel, Board Liaison/Recording Clerk

GUESTS: Christine Erickson, Dean Karsky, Kermit Staggers and family

CALL TO ORDER

A quorum being present, the meeting was called to order by Board Chair Greg LaFollette at 3:05 p.m.

APPROVAL OF MINUTES

A motion was made by Ron Sisk and seconded by Jeff Gednalske to approve the minutes from the Special Meeting on May 23, 2014. Vote to approve: 4 Yeses. Motion passed.

BUSINESS OR PENDING ISSUES BROUGHT BEFORE THE BOARD

Board Chair Greg LaFollette commented on the outside service of city councilors in general, explaining that ethics are principles based and deal with the appearance of impropriety whereas laws are rules based and deal with actual impropriety.

The Board’s legal advisor David Pfeifle provided the Board with an outline of the Charter provisions and Canons applicable to the specific Requests for Advisory Opinions before the Board.

A motion was made by Jeff Gednalske and seconded by Bob Swanhorst to amend the Agenda to deal with Agenda Item 3(B), Request for Advisory Opinion 14-03, first based on the parties present. Vote to approve: 4 Yeses. Motion passed.

1. Request for Advisory Opinion #14-03 from City Councilor Dean Karsky

Councilor Karsky outlined his Request for Advisory Opinion to the Board regarding serving on the Board of Directors of the Sioux Falls Area Chamber of Commerce while being a City Council member.

Councilor Karsky indicated that he currently serves as an ambassador with the Chamber and has so served for the past nine years. Before that, he was a diplomat with the Chamber. He also pointed out that the Mayor, school board members and county commissioners also serve as ex-officio members of the Chamber Board.

Councilor Karsky expressed his intent to recuse himself from any discussions or votes as a Council member on any matters in which the Council could be specifically involved with the Chamber of Commerce. He would also recuse himself from the Chamber Board of Directors if there was a conflict of interest between the Chamber and City. Councilor Karsky did not see any difficulty in reconciling these two roles.

Pfeifle informed the Board that the Sioux Falls Area Chamber of Commerce is a domestic non-profit corporation in good standing with the State of South Dakota with a 501(c)(6) status.

A motion was made by Ron Sisk and seconded by Jeff Gednalske that the Board finds that as long as Councilor Karsky recuses himself in a real or potential conflict of interest, the Board does not see an issue with serving on the Chamber of Commerce Board of Directors while being a City Council member.

No further discussion. Vote to approve. 3 Yeses. 1 No. Motion passed.

2. Request for Advisory Opinion #14-02 from City Councilors Christine Erickson and Kermit Staggers

Councilor Staggers outlined their Request for Advisory Opinion to the Board regarding serving as precinct officers while also being City Council members.

Councilor Staggers advised the Board that he has been a precinct officer for 22 years and has not had anyone raise concerns about a conflict of interest with his City Council position.

Councilor Staggers stated that he does not view a precinct officer as an elected public office pursuant to the definition of "public office" found in Black's Law Dictionary. It is a position serving a political party just like a church elder or board member serving a church.

Councilor Erickson explained that the precinct person attends the state political convention and votes on the constitutional officers and political platforms of the party along with hundreds of

other precinct people from across the state. She ran for this position to be able to give back to her political party.

The Board discussed Canon 7 and its application to the precinct officer position. Discussion was also had regarding principles verses rules.

Councilor Erickson discussed the duties of a precinct person and reiterated that their role is very minor.

Councilor Staggers urged the Board to focus on the City Charter which prohibits City Council members from holding other public offices and that a precinct officer or committee person does not meet the definition of "public office".

The Board raised the scenario of a precinct person knocking on someone's door asking them to support a particular candidate or political party and whether the fact that the precinct person was also a City Council member would lend any undue influence.

Board Member Ron Sisk informed the Board that Councilor Staggers had been a student at his institution and therefore he felt he should recuse himself from the discussion.

Discussion was had regarding the Board's role in giving advice and protecting Council members.

Board members agreed that a precinct person is not a public office under the letter of the law. Discussion followed about principles verses the law. The Board further discussed that if this were brought to the Board as a complaint, it would be difficult to find a violation of the applicable rules.

David Pfeifle reviewed the Canons again encouraging the Board to consider the entire text of Canon 7. He further advised the Board on the principle of "appearance of impropriety" and that it governs the formation of rules of ethics but is not a rule itself.

Concern was expressed that the level of involvement of precinct officers may vary so that some conduct may be improper while other conduct would be fine.

Board Chair LaFollette commented that if this were a court of law, there would be no choice but to follow the law. However, here the Board has been asked to issue an opinion on ethics which is based on principle. He further stated that the Board will issue an opinion only and City Councilors can choose to follow it or not.

Discussion was had regarding whether there was any evidence of inappropriate political activity or conflict that could not be avoided. Further concern was expressed that if the Board opined that being a precinct person was inappropriate while serving as City Councilor, it could also prohibit any Council member from going out and voluntarily campaigning for somebody.

David Pfeifle advised the Board that they were drawing a line that was differentiating political activity from chamber of commerce or other non-profit organization activity including fundraising for the same. He cautioned that that line that would be difficult to justify and legally defend as they were dealing with protected political activity. He further advised that these rules were written 20-30 years ago when the political speech doctrine was still in its infancy.

Councilor Karsky clarified that no matter the advice or direction given in an advisory opinion, any complaint filed with the Board of Ethics would need to stand on its own merits.

David Pfeifle recommended the Board take a middle ground approach rather than recommending a complete prohibition against holding both positions.

A motion was made by Bob Swanhorst to deny the request of the City Councilors to hold precinct officer positions for a political party. Greg LaFollette suggested the motion not be a denial but an advising that the Board finds the suggested action may fall outside the bounds of the principles of ethics. There was no second to the motion. Jeff Gednalske expressed his concern that the Board did not find any action outside the bounds of ethics and that there were no facts presented that would illustrate that holding both positions was inappropriate.

Bob Swanhorst then moved and it was seconded by Greg LaFollette to advise Councilors Erickson and Staggers against serving as precinct officers for a political party. No further discussion. Vote to approve. 2 Yeses. 1 No. 1 Abstained. Motion passed.

Kermit Staggers asked the Board for a separate ruling regarding whether it would be a conflict of interest for him to hold an elected church office (church elder) while serving as a City Council member.

A motion was made by Bob Swanhorst and seconded by Jeff Gednalske for approval of the request and for positive guidance regarding service as a church elder while also holding the office of City Councilor. No further discussion. Vote to approve. 3 Yeses. 1 Abstained. Motion passed.

Discussion was had on the requirement that it takes a majority of members present to pass a motion.

At approximately 4:08 p.m. Carol Knudtson joined the meeting.

NEXT MEETING

No specific date for the next meeting was scheduled.

ADJOURNMENT

Meeting adjourned at 4:10 p.m.

Respectfully submitted,

Cari Hanzel
Board Liaison/Recording Clerk