AGENDA

Board of Ethics Meeting

Commission Room
1st Floor ~ City Hall
224 West Ninth Street
Sioux Falls, South Dakota

Thursday, June 7, 2018
at 3:30 PM

1. CALL TO ORDER

2. APPROVAL OF MINUTES FROM MARCH 29, 2018 MEETING

3. APPROVAL OF WRITTEN ADVISORY OPINION 18-1

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

   A. REQUEST FOR ADVISORY OPINION (18-2) FILED APRIL 25, 2018

5. ADJOURNMENT

BOARD OF ETHICS MEMBERS:
Jack Marsh, Chair
Jeff Gednalske, Vice Chair
Wanda Harris
Greg LaFollatie
Sue Roust

CITY STAFF:
Karen Leonard, Acting City Attorney
Cari Hanzel, 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.
MINUTES

Thursday, March 29, 2018
at 4:00 p.m.

Board of Ethics Meeting

Commission Room
1st Floor ~ City Hall
224 West Ninth Street
Sioux Falls, South Dakota

CITY OF SIoux FALLS

BOARD MEMBERS PRESENT: Jeff Gednalske, Wanda Harris, Greg LaFollette, Jack Marsh and Sue Roust

BOARD MEMBERS ABSENT: None

STAFF PRESENT: Karen Leonard, Acting City Attorney, and Carl Hanzel, Recording Clerk

CALL TO ORDER

A quorum being present, the meeting was called to order by Board Chair Jack Marsh at 4:00 p.m.

APPROVAL OF MINUTES

A motion was made by Jeff Gednalske and seconded by Wanda Harris to approve the minutes from the meeting on January 26, 2018. Vote to approve: 4 Yeses. Motion passed.

BUSINESS OR PENDING ISSUES BROUGHT BEFORE THE BOARD

A. Request for Advisory Opinion (18-1) filed March 5, 2018.

Marsh outlined the pending Request for Advisory Opinion submitted by Council Member Greg Neitzert.

LaFollette recused himself from the discussion and vote on the matter. LaFollette left the room at 4:02 p.m.

Marsh advised that Council Member Neitzert waived his right to confidentiality regarding his advisory opinion request.

The Board invited Council Member Neitzert to speak to his request. He was sworn under oath.

Council Member Neitzert thanked the Board of Ethics for their service. After detailing his involvement with the transportation networking company, Lyft, he asked the Board if he would
need to restrict his activities related to matters dealing with the transportation services ordinances that may come before the City Council.

Discussion was had regarding constituents' concerns about transportation networking companies that were brought to Council Member Neitzert.

Further discussion was had regarding the application process of Lyft.

The public was given the opportunity to speak to the Board on the matter. No one came forward.

Leonard reviewed the applicable ordinances and discussion was had regarding the issues to be addressed.

The Board discussed whether Lyft drivers would be independent contractors or employees.

A motion was made by Roust and seconded by Harris that Council Member Neitzert’s involvement with Lyft, a transportation network company:

1. Did not create a direct or indirect financial interest pursuant to Ordinance Sections 35.052 and 35.053(c);
2. Did not directly or indirectly create a private business client or customer relationship with Lyft pursuant to Ordinance 35.053(g); and
3. Did not create any ethical issues pursuant to Ordinance 35.054(d) and (e).

Vote to approve: 4 Yeses, 0 Noes. Motion Passed.

A motion was made by Harris and seconded by Roust to authorize the Board’s legal advisor, Karen Leonard, to draft an Advisory Opinion consistent with the discussions and motion of the Board and to authorize the Board Chair to sign the Opinion as drafted on behalf of the Board. Vote to approve: 4 Yeses. Motion carried.

NEXT MEETING

No specific date for the next meeting was scheduled.

ADJOURNMENT

A motion was made by Harris and seconded by Gednaiske to adjourn the meeting. Motion carried unanimously. Meeting adjourned at 4:44 p.m.

Respectfully submitted,

Carl Hanzel
Recording Clerk
Board of Ethics  
City of Sioux Falls  
Advisory Opinion No. 18-1

Request for Opinion

Greg Neitzert, City Councilor for the Northwest District, requested an opinion whether any conflict of interest or ethical issue exists regarding his participation as a Council member in discussions and/or votes related to possible changes to Chapter 124 "Transportation Services" of the Ordinances of Sioux Falls, SD, including transportation networking companies (TNC) and other vehicle for hire services, given his involvement with Lyft.

Facts

When the transportation networking company, Lyft, came to Sioux Falls in 2017, Councilor Neitzert heard a number of concerns and questions about the service from citizens, including the vetting of drivers and other safety issues. As part of his due diligence and with a desire to educate himself, he took a ride as a passenger with a Lyft driver to see what it was like from the customer end. He also submitted an application to be approved as a Lyft driver. Councilor Neitzert did these things to get a first-hand experience and a sense of how the process worked. Once Councilor Neitzert’s application was approved, he had the ability to use his car in the capacity as an independently contracted Lyft driver. There were no fees to apply or to be approved nor has there been any compensation for doing either. At no time has any money changed hands between Councilor Neitzert and Lyft. Councilor Neitzert never drove for Lyft; never went "online" where he would be available to accept and perform a ride as a driver; and received no compensation or benefit (monetary or otherwise) from being a registered Lyft driver. Although approved to be a driver, he never intended to actually drive. The application was solely done for educational purposes. Councilor Neitzert subsequently had his Lyft driver status deactivated. Further, Councilor Neitzert has no intention of working for any TNC or vehicle for hire business during his time on the City Council.

Opinion

Conflicts of Interest

Section 35-052 defines financial interest as, "[a]n expectation of receiving a pecuniary benefit. A Financial Interest of an official includes any Financial Interest of a member of that person’s immediate family. A person has a Financial Interest in an organization in which that person has an ownership interest, or is a director, officer or employee. An official has a Financial Interest in a decision if a Financial Interest of that person will vary with the outcome of the decision. A Financial Interest does not include the following: (1) A personal or Financial Interest which is not of the magnitude that would exert an influence
on an average, reasonable person; (2) A personal or Financial Interest of a type which is
generally possessed by the public or a large class of persons to which that official belongs;
and (3) An action or influence which would have an insignificant or conjectural effect on
the matter in question.*

Sections 35.053 (c) of the Code of Ordinances of Sioux Falls, South Dakota prohibits City
officials from participating or voting in matters in which they may have a direct or indirect
financial interest, or in which an immediate family member has a direct or indirect financial
interest.

Section 35.053 (g) of the Code of Ordinances of Sioux Falls, South Dakota prohibits City
officials from participating or voting in matters that come before the city council directly or
indirectly involving the interest of a present business client or customer of any official or the
interest of a person or entity who has been a business client or customer of any official
within the prior 12 months. A business client or customer is any person or entity for which
the official is employed or if in the past 12 months payment has been received by the
official from the person or entity in the amount of $5,000 or greater and that fact is or
should be known by the official.

The Board finds that Council Member Neitzert does not have either a financial interest nor
does he meet the definition of being employed under Section 35.053(g), and, therefore,
does not have a conflict of interest in participating in discussions and ultimately voting on
Transportation Network Company legislation.

Standards of Conduct

Section 35.054(d) and (e) prohibits city officials from taking any action to "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" and city officials are prohibited from "using their elected position to
secure special advantages, privileges or exemptions for themselves or others." The Board
finds that Council Member Neitzert has not violated the provisions of this section rather he
was responding to constituent concerns regarding this type of TNC.

Further, the Board finds that it is unnecessary to rule on the last issue presented of
whether Council Member Neitzert needs to disclose to the council a conflict with any
other type of vehicle for hire legislation, not related to TNC, as there was no affirmative
ruling by the Board that there was a conflict.

[Signature]
Jack Marsh, Chair

Opinion decided: March 29, 2018

Written opinion approval: ____________________
City of Sioux Falls
Board of Ethics
Request for Advisory Opinion

Name of Individual Requesting Opinion: Theresa Stehly, City Council
Address: 1821 S. Van Eps Ave.
Telephone Number: (605) 929-8783
Email Address: tstehly@siouxfalls.org

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

I am requesting that the Ethics Board provide guidance to the following:

1. My right to circulate a Sioux Falls municipal citizen petition. (This could be an initiative, referendum or charter revision effort)
2. My right to lead a Sioux Falls municipal citizen petition drive. (This could be an initiative, referendum or charter revision effort)
3. My right to participate in a county, school district or statewide initiative/referendum petition effort.
4. My right to lead a county, school district or statewide initiative/referendum petition effort.
5. My right to circulate nominating petitions for other city council candidates.
6. My right to circulate nominating petitions for school board, county and state candidates.

I am requesting that these inquiries be addressed within 45 days. Thank you.

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: [Signature]

04/25/18

Date

Received by: [Signature]

4/25/18

Date

Please return completed form to the City Attorney’s Office.
2015 Election Results

The Sioux Falls School District 49-5 conducted its annual Election April 14, 2015. The polls were open from 7:00 a.m. until 7:00 p.m. The District contracts with the Minnehaha County Auditor to tabulate results. The Ballots were counted at the Minnehaha County Administration Building, 415 North Minnesota Avenue.

The Sioux Falls School District Annual Election - Unofficial Returns*

For a position on the Sioux Falls School District School Board (two Members to be elected) and Referred Decision to start school after Labor Day.

With 14 of 14 Vote Centers Counted:

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<th>% of Votes</th>
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<tr>
<td>Kate Parker</td>
<td>8,151</td>
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*Referred Decision

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</table>
Tobacco tax hike emboldens counties to push for more

Liquor fees could net millions, they say

BY STEVE YOUNG

syoung@argusleader.com

South Dakota's county commissioners have a new optimism for an old tactic when it comes to providing public safety in rural areas.

As they have in the past, commissioners intend to ask lawmakers next legislative session to increase the state tax on alcohol to help them pay for deputies, jails and justice.

While all similar efforts have failed, commissioners left their annual state convention in Spearfish this week with a new confidence.

The reason? The will of South Dakota voters last fall when they passed a $1 increase on tobacco products.

"Maybe the political landscape has changed," said Bob Wilcox, executive director of the S.D. Association of County Commissions. "It's going to be a difficult task to achieve ... but we're guardedly optimistic."

Commissioners are leaving it to Wilcox to craft possible legislation, including the amount of any potential increase and how it would be divided among state, municipal and county governments.

One idea proposed by county boards in southeast South Dakota suggested 10 cents per drink, collected at the wholesale level. They estimated that would raise an additional $41 million annually, based on 2006 consumption figures, and is needed to pay for growing public safety costs.

That's a chorus area legislators say they have heard and dismissed in the past. But they, too, understand the implications of last November's vote on tobacco.

"I think the tobacco vote shows the willingness of voters to tax some products that have perceived societal ill effects," said Dave Knudson, R-Sioux Falls, the Senate majority leader. "I think that fact probably makes the Legislature a little more receptive to taxes on liquor."
It doesn't mean legislators will treat such a request any different this time, Sen. Scott Heidepriem, D-Sioux Falls, said. But if it makes its way onto the 2008 ballot as an initiated measure, "I think it would stand a pretty good chance" of passing, Heidepriem said.

The need for some kind of additional assistance is critical, said Carol Twedt, a Minnehaha County commissioner. Her board has opted out of the state property tax freeze five times this decade - four times for law enforcement needs and once for human services.

Seventy percent of the county's budget - proposed to be $57.2 million next year - goes to law enforcement and human services, she said.

"We can't stay ahead of the game," Twedt said. "And I think we have a responsibility to maintain the safe culture this community has. The only option we have now is to opt out of property taxes. You ask the sheriff here, and he'll tell you that 80 percent of people in jail don't pay property taxes."

Industry opposition

The state's alcohol industry certainly will oppose any tax increase. Caren Assman, executive director of the Licensed Beverage Dealers of South Dakota, said the state already has some of the highest liquor taxes in the region.

For example, almost one-third of the $12.18 it costs for a 750-milliliter bottle of liquor is taxes, Assman said.

"Any increase that a new tax proposal would introduce is going to make us the absolute highest in the Midwest region as far as taxes," she said.

Raising taxes is something many legislators refuse to do. That's true of Sen. Ken Albers, R-Canton.

"I believe that the counties are able to work with what they have available to them now," he said. "I don't believe a tax increase is necessary to get that job done."

Albers' wife runs a steakhouse that serves alcohol in Canton. He is a former Lincoln County sheriff who dealt with budgeting each year. But he's been out of law enforcement for 12 years. And the budgeting landscape today is so much different than it was during his time as sheriff, he said.

"I think it's almost a little bit like apples and oranges," Albers said. "The fact is, there is a great deal more money going into law enforcement now than there was at the time I was in office."
Tweedt disagrees. And other lawmakers, while not necessarily endorsing an increase in alcohol taxes, at least say they empathize with the counties' financial plight now.

"I'll remain open to them," Heidepriem said of county commissioners. "They have an extremely difficult job and, frankly, a fairly inflexible revenue source."

Knudson agreed, saying, "you can probably mark me as being generally in support of higher liquor taxes to help offset some of the court costs associated with alcohol abuse."

Tweedt, who did not attend the state convention last Monday through Wednesday, said she was disappointed the proposal forwarded by the southeast South Dakota county commissions didn't gain more traction.

Property tax relief

It would have given the state about $1.9 million of the $41 million increase that a dime a drink would bring. The counties would have received the rest - more than $39 million. Municipal governments would continue to receive about what they do now.

Half of that $39 million earmarked for counties would have been used for property tax relief, Tweedt said.

"I think the two components that would have been attractive to legislators is that the state would have received some additional money, and then the property tax relief for all over the state. That's an issue that legislators knock on doors for and campaign about every two years."

Wilcox said it's not likely that the property-tax relief component will make it into any proposed legislation. But he didn't shut that door completely.

Heidepriem and Knudson had little reaction to how that would sell with legislators. Heidepriem said the state has about $1 billion in trust funds and budget surpluses that could be tapped in part for property tax relief.

"There are going to be a lot of folks saying, 'Hey, wait a minute. We have money in reserve. Why don't we use that?'" he said.

If lawmakers again turn down whatever legislation is brought forward, many observers expect to see it on the ballot in 2008.
Since county commissioners can't use taxpayer dollars to hire people to circulate petitions, they might have to do that work themselves, Twedt said. But she thinks they could get the job done.

"We're not trying to bypass the legislators; we'd like them to work with us on this," Twedt said. "On other hand, we would be willing to stand up to get signatures. That's not meant as a threat. It's just, the timing would be right based on the cigarette vote. It would make sense to do it now."

Failed drive to put increase on ballot was attempt to pay for rising costs

BY TERRY WOSTER

twester@midco.net

PIERRE - An alcohol tax increase championed by South Dakota counties couldn't garner enough public support to make it onto the November ballot.

Sponsors of the proposed dime-a-drink liquor tax failed to file petitions by Tuesday's deadline for the general election ballot. Citizens were reluctant to sign their petitions, they said, and they just ran out of time.

Petitions for two other issues - an abortion ban and a ban on tax-funded lobbying - made the deadline. Signatures are being checked.

Almost two-thirds of the estimated $35 million that the alcohol tax increase might have raised would have gone to counties, primarily to pay for increasing jail, law enforcement and legal costs often related to alcohol, said backers of the initiative.

"We thought that (the tax) was a reasonable nexus," Tom Barnett of the State Bar Association said. "Even so, it's very difficult to gather signatures when the measure being submitted is a tax increase."

Supporters needed 16,776 signatures. They started gathering those signatures in January, but it wasn't enough time, they said.

"The calendar wasn't kind to us," Bob Wilcox of the Association of County Commissioners said.
Wilcox and Barnett were part of a coalition that announced the petition drive after failing to win legislative support for such a tax.

Besides money for counties, funds from the tax increase would have been split among cities, teen court services, the 24-7 sobriety program and legal help for low-income citizens.

Called a 300% increase

Jeremiah M. Murphy, a Rapid City lobbyist for Republic National Distributing Co., said the sponsors of the petition drive "had the same problem on the street that they've always had in the Legislature. Once people understand the true nature of the tax, they reject it."

Murphy and other opponents of the tax proposal argued that it amounted to a 300 percent increase in the tax and would have made South Dakota's tax on some liquor products the highest in the nation.

"It was not a tax on a drink. It would have raised all liquor prices," Murphy said. "That's bad public policy, and I think the lack of signed petitions shows that the public understands that."

Two years ago, anti-smoking groups that couldn't persuade legislators to raise the tax on cigarettes initiated a $1-a-pack tax that passed easily in the general election.

Wilcox said he isn't sure what the next step might be, but he added, "The problems are still going to be there."

Law enforcement needs

Barnett said the services will be paid for one way or another.

"The increasing costs are being incurred, no matter what happened here," he said. "It just means that homeowners and businesses will pay more in property taxes."

During a committee hearing on the drink tax early in January, Minnehaha County administrator Ken McFarland told lawmakers that law enforcement accounts for 48 percent of the county's budget.

Commissioner Carol Tweedt said she knew in recent days that the petition drive "was in big trouble. People think you have legions of petition carriers out there, but the reality is, unless you have paid circulators, it's really difficult."
She said the failure to get the measure on the ballot means counties will continue to look for other ways to meet rising costs.

"I'm almost tempted to say you'll never hear the words 'liquor tax' out of my mouth again," she said. "We need to find a source of revenue, though. We've opted out of the property tax limitations five times. I don't think that was ever what the Legislature intended to happen."

Reach Terry Woster at 605-224-2760.
INITIATED MEASURE PETITION

Attorney General's Explanation

Title: An initiated measure prohibiting contributions to ballot question committees by non-residents, out-of-state political committees, and entities that are not filed with the Secretary of State.

Attorney General Explanation: This measure prohibits contributions to statewide ballot question committees by non-residents, by political committees organized outside South Dakota, and by any entity that is not filed as an entity with the Secretary of State for the four years prior to making a contribution. It requires the Secretary of State to impose a civil penalty on any ballot question committee that accepts a prohibited contribution. The civil penalty is double the amount of the contribution. The measure requires the Secretary of State to investigate alleged contribution violations prohibited by this measure.

Currently, there are state laws regulating other kinds of election-related contributions, disclaimers, and disclosures. Violations of these laws are classified as misdemeanors and are subject to criminal penalties. The measure allows a court to impose a civil penalty (up to $5,000 per violation) in addition to the criminal penalty. Under the measure, the Secretary of State must investigate alleged violations of these particular election-related laws.

All civil penalties collected under this measure will be placed in the State general fund.

The measure is likely to be challenged on constitutional grounds.

Filed this __ day of August 2017

Name of Sponsor: Mark Mickelson 605-977-4873
Mark@mickco.com

This petition circulator is a paid petition circulator and is being paid $10 per hour.