

<b>AGENDA</b>	Thursday, September 19, 2019 at 10:00 AM	 CITY OF SIOUX FALLS
Board of Ethics Meeting	Commission Room 1st Floor ~ City Hall 224 West Ninth Street Sioux Falls, South Dakota	

**1. CALL TO ORDER**

**2. APPROVAL OF MINUTES FROM AUGUST 16, 2019 MEETING** (ATTACHED)

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

**A. REQUEST FOR ADVISORY OPINION (19-5) FILED AUGUST 13, 2019** (ATTACHED)

**B. REVIEW OF TIME FRAME FOR RENDERING WRITTEN ADVISORY OPINIONS – SECTION 2.05 OF THE BOARD’S RULES OF PROCEDURE**

**4. PUBLIC INPUT**

**5. ADJOURNMENT**

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**BOARD OF ETHICS MEMBERS:**

Jack Marsh, Chair  
Jeff Gednalske, Vice Chair  
Wanda Harris  
Greg LaFollette  
Sue Roust

**CITY STAFF:**

Stacy Kooistra, 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](mailto:humanrelations@siouxfalls.org) at least 12 hours in advance of the meeting.*

<b>MINUTES</b>	Friday, August 16, 2019 at 11:00 a.m.	 <b>CITY OF SIOUX FALLS</b>
Board of Ethics Meeting	Commission Room 1st Floor ~ City Hall 224 West Ninth Street Sioux Falls, South Dakota	

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

**BOARD MEMBERS ABSENT:** Jeff Gednalske

**STAFF PRESENT:** Stacy Kooistra, City Attorney, and Cari Hanzel, Recording Clerk

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**CALL TO ORDER**

A quorum being present, the meeting was called to order by Board Chair Jack Marsh at 11:00 a.m.

**APPROVAL OF MINUTES**

A motion was made by Greg LaFollette and seconded by Sue Roust to approve the minutes from the meeting on July 25, 2019. Vote to approve: 4 Yeses. Motion passed.

**BUSINESS OR PENDING ISSUES BROUGHT BEFORE THE BOARD**

1. REQUEST FOR ADVISORY OPINION 19-4 FILED AUGUST 5, 2019.

Jack Marsh introduced Request for Advisory Opinion 19-4 submitted by City Council member Theresa Stehly and outlined the attachments and handouts made available both online and at the meeting today. The Request was read into the record by the Clerk.

City Attorney Stacy Kooistra advised the Board that it had jurisdiction to hear Request 19-4 and further outlined for the Board the relevant law and prior opinions that merited review when considering the two questions in the Request.

Councilor Stehly appeared before the Board and was sworn in.

Councilor Stehly outlined a current petition drive to amend the Charter and requested clarification on her right to participate in the drive by circulating petitions and/or leading the petition drive.

Councilor Stehly referenced other elected officials' participation in petition drives at school board, county and state levels; discussed bringing the issues in this current petition drive before the Charter Revision Commission; and further discussed a similar request she made to the Board last year in Request 18-02.

The Board asked questions of Councilor Stehly. The Board then opened the matter up to public input specifically regarding the two questions Councilor Stehly raised in her current Request.

Councilor Christine Erickson appeared before the Board and was sworn.

Councilor Erickson reminded the Board that the three examples of petition drives at the school, county and state levels referenced by Councilor Stehly were each governed under different laws from the petition drive at hand. In addition, Councilor Erickson pointed out that former Representative Mark Mickelson did not oversee the South Dakota Secretary of State and former County Commissioner Anne Hajek did not oversee the County Auditor, unlike the present situation where the eight City Councilors oversee, hire and fire the City Clerk.

Councilor Greg Neitzert appeared before the Board and was sworn.

Councilor Neitzert informed the Board that all the items on the petition that is the subject of Councilor Stehly's Request are currently pending before the Charter Revision Commission. Councilor Neitzert also discussed his role as operations manager and explained that the Council, as a body, hires and fires its city council staff, including the City Clerk, and that staff reports to each council member individually and collectively. Councilor Neitzert expressed concern with the Clerk having to review petitions potentially submitted by his/her boss, as it would put staff in a precarious position.

Councilor Janet Brekke appeared before the Board and was sworn.

Councilor Brekke provided the Board with her background as the city attorney involved in implementing the Charter form of government and shepherding the ethics ordinances through city council. Councilor Brekke reviewed ordinances she considered relevant to the questions before the Board and discussed the processes available to amend the current form of government. Councilor Brekke advised the Board that she does not

supervise the City Clerk nor direct him in how to do his job. Finally, Councilor Brekke advised the Board that it was her opinion that a council member has a right to both circulate and lead a petition to amend the Charter.

Councilor Pat Starr appeared before the Board and was sworn.

Councilor Starr raised the fact that if he were to run for re-election, he would have to circulate petitions that would get turned into the City Clerk, similar to the petition drive at hand. When asked by the Board, Councilor Starr indicated that he felt Councilor Stehly has a right to circulate and lead a petition to amend the Charter.

Bruce Danielson appeared before the Board and was sworn. Danielson reviewed ordinances and previous Board opinions and their applicability to the questions raised by Councilor Stehly. Danielson advised that city councilors are not part of the leadership of the petition drive in question. Danielson expressed concern that if Councilor Stehly is denied the ability to do what she is asking in her Request, that she is being denied her First Amendment rights. He further stated that if Councilor Neitzert, in his role as Chair of the Operations Committee having supervisory power over the Clerk, wanted to circulate a petition, he would question the ethics of that.

Stacy Kooistra further advised the Board on the First Amendment aspect, specifically referencing SDCL 12-27-20, dealing with the expenditure of public funds to advocate for one position or another.

The Board held further discussion.

A motion was made by Greg LaFollette and seconded by Wanda Harris that the Board answer Question #2 of the Request affirmatively. Yes, you have that right.

No interest was raised in clarifying what the term "lead" means in Councilor Stehly's question.

No further discussion was held.

Vote to approve: Roll Call: Yeses, Sue Roust, Jack Marsh, Greg LaFollette, Wanda Harris, 4. Noes, 0. Motion passed.

A motion was made by Greg LaFollette that the Board answers Question #1 of the Request in the negative and refers the Requestor back to previous Advisory Opinion 07-1 for guidance.

Upon further discussion, Greg LaFollette amended his motion to state, relative to Question #1, the Board advises the Requestor that she not carry a Sioux Falls municipal petition to amend the Charter based on the precedent set forth in Advisory Opinion 07-1. Motion died for lack of a second.

Further discussion was held.

A substitute motion was made by Wanda Harris relative to Question #1 on the right to circulate a petition to amend the Charter, that the Board would advise against this activity as it may have the appearance of impropriety and further, this activity may appear to be a conflict of interest because of the relationship between the City Council and City Clerk.

After some discussion, Wanda Harris reworded the motion to read that, as to Question #1 on the right to circulate a petition to amend the Charter, it is the Board's opinion to advise against this activity as it may have the appearance of impropriety, and further, this activity may appear to be a conflict of interest because of the relationship between the City Council and the City Clerk. The Board further relies on the precedent of 07-1. Greg LaFollette seconded the motion.

Further discussion was held.

Greg LaFollette called the question.

Vote to approve: Roll Call: Yeses, Jack Marsh, Greg LaFollette, Wanda Harris, 3. Noes, Sue Roust, 1. Motion passed.

A motion was made by Sue Roust and seconded by Greg LaFollette to authorize the Board's legal advisor, Stacy Kooistra, to draft an Advisory Opinion consistent with the discussions and motion of the Board and to authorize the Board Chair to both approve and sign the opinion as drafted on behalf of the Board. Vote to approve: 4 Yeses. Motion passed.

## **PUBLIC INPUT**

Bruce Danielson appeared before the Board and provided input on the Board's decision.

Councilor Stehly appeared before the Board and explained that when she asked about leading the petition, she intended that to mean the whole package including organizing and circulating. She asked for clarification from the Board on what she can do as far as leading a petition drive.

The Board explained that they were not determining whether she had the right but instead providing an advisory opinion. The Board clarified that it was their opinion that Councilor Stehly could be involved in all aspects of the petition drive to amend the Charter except the circulation of petitions because of the issue with the City Clerk.

**NEXT MEETING**

No specific date for the next meeting was scheduled.

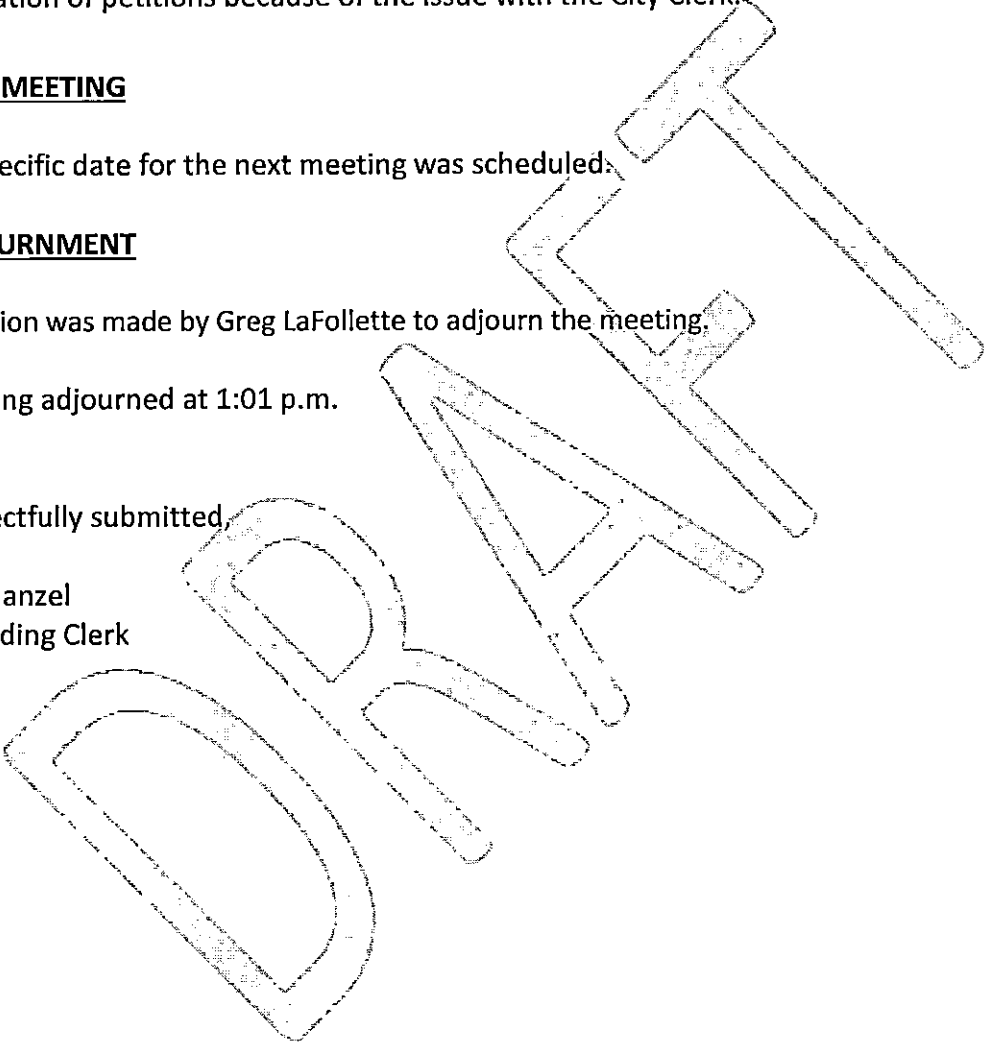
**ADJOURNMENT**

A motion was made by Greg LaFollette to adjourn the meeting.

Meeting adjourned at 1:01 p.m.

Respectfully submitted

Cari Hanzel  
Recording Clerk



City of Sioux Falls  
**BOARD OF ETHICS**

ADVISORY OPINION NO. 19-4

**Request for Opinion**

Sioux Falls City Councilor Theresa Stehly requested that the Board of Ethics provide guidance regarding her right to:

1. Circulate a Sioux Falls municipal citizen petition to amend the Charter, and
2. Lead a Sioux Falls municipal citizen petition to amend the Charter.

**Facts**

Sioux Falls Charter Section 8.02 identifies four methods for amending the City Charter:

- a) By law;
- b) By ordinance of the City Council;
- c) By report of a charter commission created by ordinance; or
- d) By the voters of the City.

A Sioux Falls municipal citizen petition drive to amend the Charter has been initiated by an organization entitled, Triple Check the Charter as authorized under Charter Section 8.02(d) above. Councilor Stehly would like to participate in this petition drive by circulating petitions and/or leading the petition drive.

As the Election Official for all municipal elections, the City Clerk is an employee of the City Council. The City Council members, as a body, have the ability to hire and fire the Clerk and his/her staff. The Council has a direct supervisory role over the Clerk.

**Opinion**

The Board of Ethics looks to the Code of Ethics set forth in Chapter 34 and the Conflicts of Interest and Standards of Conduct of City Council Members set out in Chapter 35 of the Ordinances of Sioux Falls, SD, as well as with previous opinions of the Board for guidance in considering Councilor Stehly's questions.

The preamble to the Code of Ethics found at Section 34.002 states, among other things, that:

Government decisions and policy must be made and implemented through proper channels and processes of the governmental structure. ...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.

Other Canons the Board considered included in part:

- City Ord 34.003 (Canon One):
  - (a) A city council member shall honor the letter and spirit of the law.
  - (b) City council members shall support the...charter of the city.
  
- City Ord 34.005 (Canon Three):
  - (a) A city council member should avoid impropriety and the appearance of impropriety in all his or her activities.
  
  - (d) City council members should not...lend the prestige of the office of city council member to advance the private interests of others; nor should they convey or permit others to convey the impression that they are in a special position to influence them.
  
- City Ord 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.
  
- City Ord 34.009 (Canon Seven):
  - (a) A city council member should refrain from political activity inappropriate to his or her office.

Additionally, the Board considered Section 35.054 of the Ordinances which states in part:


City officials shall not take action to:

- (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[.]



It is the Board's opinion that we advise against the activity in Question #1 as this may have the appearance of impropriety and further that this activity may appear to be a conflict of interest in the relationship between the City Council and City Clerk. The Board also relies upon the precedent of Board of Ethics Advisory Opinion 07-1.

Regarding Question #2, it is the opinion of the Board of Ethics that City Councilor Theresa Stehly has the right to lead a citizen petition to amend the Charter.



Jack Marsh, Chair

Opinion decided: August 16, 2019



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

Name of Individual Requesting Opinion: Janet Brekke

Address: 5008 Pennbrook Ave.

Telephone Number: (605) 367-7467

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.**

Pursuant to Article III - Charter Amendment of the Sioux Falls City Charter, on Aug. 5, 2019, a committee of 15 citizens filed an affidavit and have begun a petition drive proposing amendments to Article II City Council of the city charter. this is a grass roots effort which is all respects legal and provided for in Sioux Falls City Charter. I am in favor of having the proposed amendment brought forward to Sioux Falls citizens for a public vote. The Charter Revision Commission also has the authority to send the proposed amendments to a public vote. I am also appearing before the Charter Revision Commission requesting similar amendments to those appearing in the petition drive.

I would like to participate in any and all aspects of the petition drive as I see fit, and am requesting an advisory opinion from the Sioux Falls Ethics Board as to whether there is any provision in the City of Sioux Falls Canons of Ethics and Conflicts of Interest in Ordinance that would prevent or limit my participation.

*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 Brekke*

8/13/19  
Date

Received by: *Carli Hamzel*

8/13/19  
Date

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