


MINUTES	Friday March 6, 2020 at 2:00 p.m.	 CITY OF SIOUX FALLS
Board of Ethics Meeting	Commission Room 1st Floor ~ City Hall 224 West Ninth Street Sioux Falls, South Dakota	

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

BOARD MEMBERS ABSENT: Wanda Harris

STAFF PRESENT: Stacy Kooistra, City Attorney, and Cari Hanzel and Bonnie Woolam, Recording Clerks

CALL TO ORDER

A quorum was present and the meeting was called to order by Board Chair Jack Marsh at 2:00 p.m.

ELECTION OF CHAIR AND VICE CHAIR

Following some preliminary discussion Greg LaFollette nominated Jack Marsh to serve as Chair of the Board of Ethics for 2020. Dan Fritz seconded the motion. With no further nominations on the floor, Jack Marsh declared the nominations closed and proceeded with a vote. Vote to approve: 4 yeses. Motion carried.

Greg LaFollette nominated Sue Roust to serve as Vice Chair of the Board of Ethics for 2020. Dan Fritz seconded the motion. With no further nominations on the floor, Jack Marsh declared the nominations closed and proceeded with a vote: Vote to Approve: 4 yeses. Motion carried.

APPROVAL OF MINUTES

A motion was made by Sue Roust and seconded by Dan Fritz to approve the minutes from the meeting on December 19, 2019. Vote to approve: 4 Yeses. Motion carried.

ANNUAL REPORT

A motion was made by Sue Roust and seconded by Greg LaFollette to approve the 2019 Board of Ethics Annual Report dated March 6, 2020. Vote to approve: 4 Yeses. Motion carried.

BUSINESS OR PENDING ISSUES BROUGHT BEFORE THE BOARD

1. REQUEST FOR ADVISORY OPINION 20-1 FILED FEBRUARY 12, 2020

Jack Marsh introduced Request for Advisory Opinion 20-1 submitted by City Council member Janet Brekke and entered it into the record.

City Attorney Stacy Kooistra advised the Board that it had jurisdiction to hear Request 20-1 as it pertained to questions 1-3 of the Request.

Attorney Kooistra advised that some questions posed by Councilor Brekke as well as attachments A, B, and C as they applied to the behavior of others was limited by § 35.057 and therefore not within the jurisdiction of the Board to determine. Only the Councilor's own conduct could be considered under her request.

Attorney Kooistra agreed that the first 7 questions were within the purview of the Board but the last 4 were not because they involved the conduct of others and were outside of the Board's purview to the extent that they referenced the conduct of other people.

Attorney Kooistra further outlined the relevant law and prior opinions that were most applicable and merited review when considering the Request.

Councilor Brekke appeared before the Board and was sworn in.

Councilor Brekke provided some background to her request and stated that the intent of her last 4 questions was a more specific restatement of her first 3 questions as it pertained to her. She explained that her reason for requesting an advisory opinion on her own conduct was because she did not want to cast aspersions on her fellow colleagues but she thought that the issues created an ethical line for her as a councilmember.

Councilor Brekke read a letter to the Board that she previously presented to the Mayor, City Councilmembers and staff explaining her reasoning for the Request for Advisory Opinion.

Councilor Brekke further discussed her questions presented to the Board and expounded on her position on the Board's role in deciding those questions.

The Board discussed a Supreme Court ruling on free speech, applicable state statutes, city charter, and city ordinances as they related to Councilor Brekke's questions.

Councilor Brekke offered further discussion on her position and expounded on her intention to fashion her PAC after the Mayor's PAC and offered specifics on the naming and mission. Further questions were presented to Councilor Brekke by the Board.

Councilor Brekke stated that she intends to engage in the activities as enumerated in questions 1-3. Councilor Brekke further stated she did not think those types of activities were right but would participate in those activities because if she did not, then her voice would be lost.

PUBLIC INPUT

Pamela Sullivan was sworn and appeared before the Board and provided input to the Board.
Tamara Baker was sworn and appeared before the Board and provided input to the Board.
David Zokaites was sworn and appeared before the Board and provided input to the Board.
James Sanden was sworn and appeared before the Board and provided input to the Board.
Pat Starr was sworn and appeared before the Board and provided input to the Board.
Joan McMillen was sworn and appeared before the Board and provided input to the Board.
Sheila Wood was sworn and appeared before the Board and provided input to the Board.
Christine Erickson was sworn and appeared before the Board and provided input to the Board.
Richard Barnette was sworn and appeared before the Board and provided input to the Board.
Bruce Danielson was sworn and appeared before the Board and provided input to the Board.
Casey Murschel was sworn and appeared before the Board and provided input to the Board.

The Board addressed the questions individually with Attorney Kooistra for legal opinion. Attorney Kooistra advised the board that as a matter of law, Councilor Brekke could legally engage in the activities as stated in questions 1-3 of her Request and that the Ethics Board could not over-rule state law. Concerning the past activities of Counselor Brekke, Attorney Kooistra advised that she did not violate any laws.

Greg LaFollette made a motion that the Ethics Board determine the \$300 donation from Theresa Stehly as an individual, the robo call supporting Councilor's candidacy, or accepting miscellaneous contributions, be determined to be not ethics violations.

Dan Fritz seconded the motion. Vote to approve: 4 Yeses. Motion carried.

Greg LaFollette made a second prospective only motion that the use of Councilor or Mayor title, financial support personally or by a controlled PAC or active support such as yard signs,

campaign buttons, mailers, events, etc. be deemed to rise to the level of the appearance of impropriety and as such be considered an ethics violation.

No second. Motion dies for lack of a second.

Further discussion ensued.

Sue Roust presented a motion that the Board finds that situations as described in questions 1-3 of the Request are legal and do not give rise to the appearance of impropriety. Dan Fritz seconded the motion.

Discussion was had during which Attorney Kooistra advised removing the word "legal" from the motion.

Sue Roust re-stated her motion that the Board finds that the situations as described in questions 1-3 of the Request do not give rise to the appearance of impropriety. Motion seconded by Greg LaFollette. Vote to Approve: 3 Yeses: Roust, Fritz, Marsh. 1 No: LaFollette. Motion carried.

Discussion ensued concerning whether or not all questions were answered. Councilor Brekke confirmed that all of her questions were addressed by the discussion, motions, and vote of the Board as they apply to her.

Sue Roust presented a motion 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. Motion was seconded by Greg LaFollette. No discussion. Vote to approve: 4 Yeses. Motion carried.

PUBLIC INPUT

Bruce Danielson addressed the Board and requested that all of the Board of Ethics' meeting agendas, minutes, and attachments prior to 2009 be added to the Board of Ethics website.

Councilor Brekke expressed concern regarding a lack of instruction in the Board procedures and rules. She recommended the Board raise the public's awareness by including an instruction in the Advisory Opinion section of the Rules of Procedure that all of the activities of the Board (except for complaints) and especially requests for advisory opinions, are done in open public hearing and that lobbying is not permitted. Councilor Brekke informed the Board that she found the prohibition addressing hypothetical questions confusing.

NEXT MEETING

No specific date for the next meeting was scheduled.

ADJOURNMENT

Meeting adjourned at 4:55 p.m.

Respectfully submitted,

Bonnie Woolam
Recording Clerk