

MINUTES	Friday, August 16, 2019 at 11:00 a.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: 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

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