

April 21, 2011

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN	)	FINDINGS OF FACT,
MEETING COMPLAINT 10-03,	)	CONCLUSIONS OF LAW
SIOUX FALLS ETHICS BOARD	)	AND REPRIMAND

The Complaint in the above entitled matter was referred to the Open Meeting Commission (OMC) by the Minnehaha County States Attorney under SDCL 1-25-6, the State's Attorney having received a notarized complaint filed under oath by Kermit Staggers.

The Staggers Complaint alleges that the Sioux Falls Ethics Board (Ethics Board) violated SDCL 1-25-2 on May 4, 2010 when the Ethics Board met and voted on an ethics matter during the course of an executive session. The State's Attorney referred the matter to the OMC.

Pursuant to SDCL 1-25-2, public bodies may hold meetings in executive session provided that the discussion concerns one of the exceptions provided in that statute. In this situation the Ethics Board met in executive session under SDCL 1-25-2(1) to "discuss the qualifications, competence, performance, character or fitness of any public officer..." It is undisputed that the discussions were properly held in executive session.

SDCL 1-25-2 provides, however, that "any official action concerning such matters shall be made at an open official meeting." The Complaint alleges that the Ethics Board took a vote on a pending matter during an executive session. The Ethics Board acknowledges the error and has explained that it is now complying with SDCL 1-25-2.

A reprimand must be issued under the terms of SDCL 1-25-6, et. seq.

FINDINGS OF FACT

1. The Sioux Falls Ethics Board is a Board created by the City of Sioux Falls. Pursuant to City ordinance the Ethics Board is vested with authority to examine evidence and decide ethics disputes concerning city officials.

2. The Complaint asserts that the Ethics Board met on May 4, 2010, in an executive session concerning an allegation that Staggers had improperly mailed campaign information to city employees. It is undisputed that the Ethics Board properly convened an executive session to discuss this issue.

3. The Complaint states that the Ethics Board issued a determination dismissing the allegations against Staggers on May 7, 2010. Because no other Ethics Board meeting had been convened in the interim, Staggers concluded that the Ethics Board either voted during the course of the May 4, 2010, executive session or called a separate meeting that was not made public under SDCL ch. 1-25.

4. The Ethics Board acknowledges that the Ethics Board decision was made on May 4 and that it lacked authority to vote during an executive session.

5. In voting during an executive session, the Ethics Board was following the advice of its longtime attorney, R. Shawn Tornow. A number of members of the Ethics Board had served for several years; and some of them were lawyers.

6. The Ethics Board explained that it has been diligent since this event, and has complied with the Open Meeting laws. While the current conduct is appropriate, it does not excuse the past issue and the Ethics Board does not expect that to be the case.

7. A reprimand is warranted.

8. Staggers requests that a reprimand be issued against not only the Ethics Committee, but also its attorney and its individual members. The State's Attorney referred this matter to the

OMC as a matter involving the Ethics Board, not specific individuals. Further, the information presented to the OMC supports a determination that the action involved was a vote of the Ethics Board itself and not a matter unique to specific Board members.

CONCLUSIONS OF LAW

1. The State's Attorney followed the procedures of SDCL 1-25-6(3) in referring this matter to the OMC. The OMC has jurisdiction.

2. Pursuant to City ordinance the Sioux Falls Ethics Board is vested with authority to examine evidence and decide ethics disputes concerning city officials. Municipal boards "created or appointed by statute, ordinance, or resolution and vested with the authority to exercise any sovereign power derived from state law" must comply with SDCL ch. 1-25. The City of Sioux Falls acknowledges that the requirements of SDCL ch. 1-25 apply, but claims that these requirements are applicable because city law requires the Ethics Board to comply with SDCL ch. 1-25. Although the referral from the State's Attorney addresses the relationship between the City charter and state law, the OMC need not delve into that issue. Regardless of whether the requirements of SDCL ch. 1-25 apply directly or through the City charter, it is undisputed that they apply in this case.

2. Pursuant to SDCL 1-25-2, public bodies may hold meetings in executive session provided that the discussion concerns one of the exceptions provided in that statute. In this situation the Ethics Board met in executive session under SDCL 1-25-2(1) to "discuss the qualifications, competence, performance, character or fitness of any public officer..." It is undisputed that the discussions were properly held in executive session.

3. SDCL 1-25-2 provides that “any official action concerning such matters shall be made at an open official meeting.” The Ethics Board did not limit its executive session to discussion. It also voted on the pending matter during the executive session. This is clear error.

4. The oral presentations before the OMC addressed the legal issue of whether good faith reliance on counsel may properly be a defense in an OMC proceeding. The OMC finds that “good faith reliance on legal counsel” is not a defense to violations of ch. 1-25. Accordingly, the OMC need not consider whether the individual members of the Ethics Board should have known that votes may not be taken in executive session or were acting in good faith in relying on their attorney.

5. This matter stems from a Complaint filed against the Ethics Board and concerns a vote taken by the Ethics Board. The Ethics Board should be reprimanded. The Stagers request that a reprimand be issued against individual Ethics Board members should be denied.

REPRIMAND

The Sioux Falls Ethics Board, as constituted on May 4, 2010, is hereby publicly reprimanded for its violation of the South Dakota Open Meetings Law. The Stagers request that a reprimand be issued against individual Ethics Board members is hereby denied.

Entered by Open Meeting Commissioners Reedstrom (Chairman), Brenner, Rothschadl, Sovell, and Steele.