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May 3, 2023

Kellen B. Willert
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618 State Street
Belle Fourche, SD 57717

OFFICIAL OPINION No. 23-01

Re: Official Opinion Concerning Aldermen Access to City Employee
Timecards

Dear Mr. Willert,

In your capacity as a counsel for the City of Belle Fourche you have requested an official opinion from the Attorney General's Office on the following question:

QUESTIONS:

- 1.) Does South Dakota law give municipal aldermen authority to access individual employee timesheets?
- 2.) Does SDCL 1-27-1.3 mandate the disclosure of employee timesheets as public records?

ANSWERS:

- 1.) No state law authorizes individual aldermen to access municipal employee timesheets.
- 2.) SDCL 1-27-1.3 does not mandate the disclosure of employee timesheets as public records.

FACTS:

Aldermen for the City of Belle Fourche have claimed authority to access individual municipal employee timecards. These Aldermen have indicated their reason to review employee timecards is to verify the work schedules of certain city employees. The Aldermen claim they are entitled to access timecards because the Belle Fourche Common Council approves the hiring and discharging of employees. They also claim employee timecards should be available as public records pursuant to SDCL 1-27-1.3

A similar question recently arose in the City of Belle Fouché under the state's open records laws. A citizen requested city employee timesheets for two specific city employees. The request was denied by the City Finance Office under the provisions of SDCL 1-27-1.5 which exempts certain records from public disclosure. This denial was appealed to the state Office of Hearing Examiners which subsequently issued a decision upholding the denial. Decision & Order, In re Public Records Request of Larry Schmaltz of the City of Belle Fourche, Office of Hearing Examiners, May 17, 2022.

IN RE QUESTION 1:

You have asked whether state law gives aldermen the authority to access individual municipal employee timesheets?

The City of Belle Fourche is a first-class municipality operated under an aldermanic form of government. See SDCL 9-2-1; City of Belle Fourche, Code of Ordinances § 2.04. In considering the question you have presented, I have reviewed the pertinent statutes concerning aldermanic forms of government as well as those statutes of general application pertaining to municipal officers and employees.

According to state law the aldermanic city council consists of the mayor and all elected aldermen. SDCL 9-8-4. "The mayor presides at all meetings of the [city] council" and performs such "other duties as may be prescribed by the laws and ordinances[.]" SDCL 9-8-3. The mayor shall have no vote at city council meetings except in the case of a tie. *Id.*

The city council as a unit is responsible for conducting the business of a municipality organized under an aldermanic form of government. See SDCL 9-8-8 (a quorum is required to conduct business).

The mayor is the chief executive officer of an aldermanic municipality. SDCL 9-8-1. In aldermanic-governed municipalities, the mayor has the authority to appoint all officers of the municipality with approval of the city council. SDCL

9-14-3. Likewise, the mayor has the authority to remove appointed city officers and to report said removal to the city council. SDCL 9-14-13.

I have found no state law that explicitly directs who (mayor, city council, specific aldermen) has general supervision over municipal employees in an aldermanic-governed municipality. As noted above, the mayor of an aldermanic-governed municipality is the chief executive officer, but that role is not defined in statute. Similarly, state law is silent as to what authority an individual alderman has over municipal employees.

The Office of Hearing Examiners recently examined whether employee timesheets are public documents which may be disclosed. The Office of Hearing Examiners determined that city employee timesheets are exempt from disclosure to the general public pursuant to the provisions of SDCL 1-27-1.5. Decision & Order, *In re Public Records Request of Larry Schmaltz of the City of Belle Fourche*, Office of Hearing Examiners, May 17, 2022. SDCL 1-27-1.5(7) exempts personnel information – “other than salaries and routine directory information” – from disclosure. Further, records that would ordinarily be public are exempt if their release “would constitute an unreasonable release of personal information.” SDCL 1-27-1.5(22). I agree with the conclusion reached by the Office of Hearing Examiners – city employee timesheets are exempt from disclosure under the state’s public records laws.

Absent a specific law granting an individual alderman authority to access employee timesheets, I cannot find that aldermen have any greater right of access to this type of information than that enjoyed by the general public. Accordingly, I conclude, as to question 1, that state law does not give individual aldermen the authority to access municipal employee timesheets.

IN RE QUESTION 2:

You have also asked whether employee timesheets are required to be disclosed as a public record under the provisions of SDCL 1-27-1.3. That statute states in pertinent part:

The provisions of §§ 1-27-1 to 1-27-1.15, inclusive, and 1-27-4 shall be liberally construed whenever any state, county, or political subdivision fiscal records, audit, warrant, voucher, invoice, purchase order, requisition, payroll, check, receipt, or other record of receipt, cash, or expenditure involving public funds is involved in order that the citizens of this state shall have the full right to know of and have full access to information on the public finances of the government and the public bodies and entities created to serve them.

SDCL 1-27-1.3.

When interpreting a statute to determine its meaning, “the language expressed in the statute is the paramount consideration.” *Olson v. Butte County Commission*, 2019 S.D. 13, ¶ 5, 925 N.W.2d 463, 464 (quoting *Goetz v. State*, 2001 S.D. 138, ¶ 15, 636 N.W.2d 675, 681). “When the language in a statute is clear, certain and unambiguous, there is no reason for construction[.]” *In re Wintersteen Revocable Trust Agreement*, 2018 S.D. 12, ¶ 12, 907 N.W.2d 785, 789 (internal citations omitted). When the intent of the statutory language is unclear, “the intent of the legislature is derived from the plain, ordinary and popular meaning of the statutory language.” *Id.* The intent of a statute “must be determined from the statute as a whole, as well as enactments relating to the same subject.” *In re Taliaferro*, 2014 S.D. 82, ¶ 6, 856 N.W.2d 805, 807 (citations omitted).

I conclude that the language of SDCL 1-27-1.3 does not mandate the disclosure of fiscal records but merely requires the exemptions found in the state open records laws to be liberally construed to allow the public access to government fiscal information. Having reached this conclusion, the exemptions found in SDCL 1-27-1.5(7) and (22) must be harmonized with the directive found in SDCL 1-27-1.3. *Ibrahim v. Department of Public Safety*, 2021 S.D. 17, ¶ 13, 956 N.W.2d 799, 803 (statutes to be construed together “to make them harmonious and workable”).

As noted above, SDCL 1-27-1.5(7) exempts from disclosure all personnel information except “salaries and routine directory information.” The language of SDCL 1-27-1.5(7) is clear and concise. A liberal construction of the language of the statute, aimed towards the public’s right to access government fiscal records, does not mandate disclosure of employee timesheet information. The only personnel information subject to disclosure under SDCL 1-27-1.5(7) is salary and directory information.

SDCL 1-27-1.5(22) exempts from disclosure records that “constitute an unreasonable release of personal information.” The Office of Hearing Examiners correctly noted that employee timesheets contain information that goes beyond the specific hours an employee worked and their consideration. Decision & Order, *In re Public Records Request of Larry Schmaltz of the City of Belle Fourche*, Office of Hearing Examiners, May 17, 2022. An employee’s timesheet includes information on when that employee used sick leave, vacation leave, or took unpaid leave. *Id.* I join in the conclusion reached by the Office of Hearing Examiners; disclosing this information would be an unreasonable release of personal information. A liberal construction of SDCL 1-27-1.5(22), as required by SDCL 1-27-1.3, does not require disclosure of employee timesheets.

CONCLUSION

I conclude that state law does not give individual aldermen authority to access employee timesheets. The Legislature must clearly grant such authority if it is deemed necessary for aldermen to carry out their duties to their municipality. I also conclude that SDCL 1-27-1.3 does not mandate the disclosure of employee timesheets. The Legislature has made such records exempt from disclosure under the provisions of SDCL 1-27-1.5(7) and (22).

Sincerely,



Marty J. Jackley
ATTORNEY GENERAL

MJJ/SRB/dd