



**BOARD OF ETHICS**

224 West Ninth Street  
Sioux Falls, SD 57104  
605-367-8880

August 11, 2020

Via hand-delivery

Sioux Falls City Council  
235 W. 10th Street  
Sioux Falls, SD 57104

Re: Ethics Complaint 20-B

Dear Honorable City Council Members:

This letter will serve as the Sioux Falls Board of Ethics' Report and recommendations to City Council.

A Citizen complaint was filed on May 18, 2020 requesting review of a course of behavior by a city council member. It has been identified as Complaint 20-B.

**FACTS**

The accused named in Ethics Complaint 20-B did not waive confidentiality, consistent with the rights provided in the Sioux Falls City Ordinances.

The Board of Ethics began consideration of Complaint 20-B on June 19, 2020. The Board voted to go into executive session, pursuant to SDCL 1-25-2 (1) and (3), to confidentially review the complaint and take initial closed-door testimony. The June 19<sup>th</sup> session was recessed to allow additional investigation. The Board resumed its consideration in another executive session on July 17, 2020. After discussion and consideration of additional research, the Board came out of executive session and agreed to what was anticipated to be the final meeting on the matter, beginning 3 p.m., Tuesday, Aug. 11. The Board reconvened in executive session on Aug. 11, discussed a draft of this report and then came out of executive session to consider a resolution in public session.

The following report was approved by the Sioux Falls Board of Ethics, in a 5-0 vote, at the meeting of Aug. 11, 2020.

Complaint 20-B alleges a violation of Sioux Falls City Ordinance 35.053(e) asserting that a city officer accepted a "gift of travel" "under circumstances which it could reasonably be inferred that the gift was intended to influence, or could reasonably be expected to influence the officer, in the performance of their official duties. ..."

The Board accepted the complaint and complied with the provisions of Sioux Falls City Ordinance §§ 35.009, 35.010, 35.058 and the Rules of Procedure, City of Sioux Falls Board of Ethics, Article III. The Board makes the following findings based upon the evidence received:

#### FINDINGS

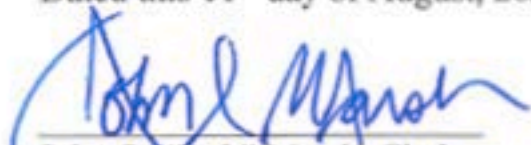
1. The Board finds the circumstances and nature of the complaint worthy of investigation and chooses not to dismiss the complaint pursuant to Ordinance 35.009(b) based on any disclosure of the complaint.
2. The Board finds the complaint does not lack a rational basis in fact or law and, furthermore, the complaint is not "frivolous" as that term is used in Ordinance 35.009(c).
3. The Board finds the facts surrounding the event from which the complaint originated establish probable cause of a violation of the Ordinances that warrant the Council to conduct proceedings to review and clarify policies concerning travel paid for by third parties. The Board finds the facts surrounding the event from which the complaint originated do not warrant imposition of sanctions on any individual in this situation.
  - a. The accused acknowledges attendance at a seminar for which travel and other expenses were paid by third parties. The host of the seminar is a group with an acknowledged political agenda. The conference included multiple settings for attendees to be potentially influenced by commercial or political interests. The accused indicates attendance was educational and did not include overt attempts to influence regarding any specific issue. The Board notes that the complaint singled out only one individual for attendance at this conference, even though other Sioux Falls officials or officers also attended. Other attendees were not named in this complaint but were named in sworn closed-door testimony. The Board finds that attendance at such events funded by third parties raises ethical questions regarding the appearance of potential influence.
  - b. The Board finds the accused contemporaneously reported the travel in question to the City Council and the City Council took no action to disapprove, rebuke or otherwise sanction the travel for the accused or other city officers or officials in attendance.

- c. The Board finds other incidents of past travel by City officers for which a third party paid expenses. While the Board did not thoroughly investigate or determine the full extent of such practices by City officers or officials, the practice appears to be common. The Board did not determine whether attendance at any prior event(s) was specifically improper.
- d. The facts here do not warrant individual sanctions for the travel subject to this Complaint 20-B. It would be unfair to find against a single individual who was following an apparent common practice among City officers.
- e. The Board finds the City Council rules lack specific guidance on attendance at seminars, conventions or other travel for which payment or reimbursement is provided by third parties. The Board finds that Ordinance 35.053(e) to be overly broad as it does not provide sufficient guidance of what actions or payments could reasonably be inferred or expected to influence an officer in an inappropriate or unethical manner. The Board notes that public accountability, transparency, and confidence in public officials would be enhanced if travel involving third-party payments were publicly announced and specifically approved by City Council before such travel takes place.

#### RECOMMENDATIONS

Based upon its consideration of Complaint 20-B, the board recommends no sanctions be imposed upon the accused. The Board generally would discourage attendance by City officers or officials at any seminar, convention or similar event financed by third parties in the absence of specific procedures requiring public disclosure and prior Council approval. At a minimum, the Board recommends (a) the City Council review and adopt policies that inform officers and officials when and whether attendance is acceptable for seminars, conventions or other travel that is financed by a third party and (b) that any such proposed travel shall be a matter of public record and be approved by vote of the City Council prior to attendance by the officer or official.

Dated this 11<sup>th</sup> day of August, 2020

  
John S. "Jack" Marsh, Chair  
On behalf of the Sioux Falls Board of Ethics