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Attorney General  
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**MINNEHAHA COUNTY**  
**OFFICE OF THE STATE'S ATTORNEY**

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September 24, 2010

South Dakota Open Meetings Commission  
c/o South Dakota Attorney General  
1302 East Highway 34, Suite 1  
Pierre, SD 57501

Re: Open Meetings Complaint filed by Kermit Stagers

Dear Commissioners:

Mr. Kermit Stagers has submitted a complaint to me as the Minnehaha County State's Attorney alleging a possible violation of the South Dakota open meeting laws by the Board of Ethics of the City of Sioux Falls, South Dakota. Specifically, Stagers claims that the Sioux Falls Board of Ethics violated open meeting provisions by making a decision either during an executive session on or about May 4, 2010, or at some other non-noticed private meeting. On May 4<sup>th</sup>, during his tenure as a member of the Sioux Falls City Council, Stagers was called to respond to an ethics complaint against him. The minutes from the May 4 meeting show that the board convened at 3:00 p.m. and went into closed session at 3:01 to address the complaint. Stagers' complaint says he responded to many questions during that session, and he was apparently dismissed while the Board remained in closed session. The minutes from this meeting (as adopted at the next Board meeting on June 30, 2010) show that it came out of closed session at 4:38 p.m. and adjourned at 4:40.

On May 7, 2010, the Board issued a report to the City Council members indicating that they found no violation of the City's ethics ordinance pertaining to city council members, section 12½ - 31. It is unknown how the Board came to this conclusion.

On or about May 13, 2010, the Board sent Stagers a letter indicating that they had determined to issue him a confidential written reprimand, based on their determination that he had acted inconsistently with the City's rules of ethics.

SDCL Ch. 1-25 contains the State's open-meeting laws. SDCL 1-25-1 says the laws apply to any "public body" of a "political subdivision." It then defines "public body of a political subdivision" to include, among other things, boards, which are: 1) "created or appointed by statute, ordinance or resolution" and 2) "vested with the authority to exercise any sovereign power derived from state law." Having received a complaint, the states attorney is required to do one of three things: a) prosecute it as a class 2 misdemeanor; b) determine it has no merit, and forward it to the Attorney General; or c) send it to the South Dakota Open Meetings

Commission. Thus, the threshold question is whether I can conclude that Stagers' complaint has no merit.

The first issue is whether the Sioux Falls Board of Ethics is a "public body of a political subdivision," to which the open meeting laws apply. The City of Sioux Falls is a home-rule entity, governed by a charter. It remains a subdivision of the State of South Dakota, in that its charter is both authorized and limited by state law (SDCL Chapter 6-12). Sioux Falls' Charter provides, at Section 7.01(b), that the City Council must establish a board of ethics by ordinance to "administer and enforce violations of the conflict of interest and financial disclosure" rules. The Charter goes on to allow the council to authorize the Board to issue binding advisory opinions, investigate or refer cases for prosecution, and impose administrative fines. The Council has adopted ordinances to carry out that provision, at Chapter 12 ½. Article I of that Chapter creates the Board of Ethics, and Section 12 ½-10 outlines the Board's general powers and duties. Section 12 ½-24 goes on to outline what penalties the Board can impose against City officers and employees. Those penalties include: reprimand, suspension or removal from lay boards, recommended suspension, demotion or termination of employees by the City, fines up to \$500, and referral for prosecution or civil action by the City Attorney.

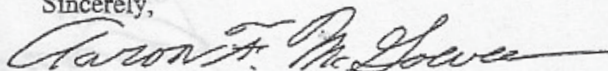
The above summary regarding the Board of Ethics makes it appear that it at least arguably meets both criteria to be a "public body of a political subdivision," in that it was created by ordinance and exercises some measure of the City's sovereign power. Thus the analysis of whether the Board's action may have been an open meetings violation continues. The basic tenet of SDCL 1-25-1 is that official meetings of the affected entities must be open to the public unless some law allows it to be closed. The obvious exception that might be considered here is executive sessions, under SDCL 1-25-2, which (among other things) can be used to discuss issues involving specific public officers or employees. The facts as explained by Stagers no doubt would warrant the Board's decision to confer about the complaint against him in closed session (as their minutes refer to it). However, SDCL 1-25-2 goes on to say that "any official action concerning such matters shall be made at an open official meeting." The Board's May 7 Report to the City Council indicated that pursuant to Ordinance Section 12 ½ - 35(b), the Board "finds" no probable cause for violation of a particular ethics ordinance. The word "finds" suggests that a decision was made in some fashion by the Board. Further, the Letter of Reprimand sent to Stagers the next week says the Board "made a decision" to issue the reprimand, and goes on to say it had "determined" a reprimand was appropriate because it had "determined" that his actions were inconsistent with a City Charter provision. Given the Board's own discussion about having made a finding and come to a decision, it is impossible for me to say that they did not take "official action." If their acts were "official action," there is no record of which I am aware to show that it was taken in public.

Based on the foregoing, I cannot conclude that Stagers' complaint is meritless. Similarly, I am not rendering an opinion on whether the complaint has merit. That is not the role of the states attorney to whom a complaint is made. Under the circumstances, and unless further investigation by the Open Meetings Commission reveals more aggravating circumstances, I am not inclined to seek to prosecute the action as a criminal matter at this time. Thus, in accord with SDCL 1-25-6(3), I am sending the Complaint, along with the materials submitted to me by Mr.

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Stagers, to you as Members of the Open Meetings Commission for any further action that you deem appropriate.

Sincerely,



Aaron F. McGowan  
States Attorney