

**CAPITOL COMPLEX
RESTORATION AND BEAUTIFICATION COMMISSION**

Minutes of the Meeting
Thursday, October 17, 2018
10:00 A.M. (CT)

Commissioners present via telephone conference: Pat Miller and John Miller.

Commissioners present in person: Tim Engel, James Hansen, and Carla Sahr.

Commissioners excused: Mayor Harding, Sandra Zinter, and Don Zeller.

Others Present: Scott Bollinger, Commissioner of Bureau of Administration (BOA); Leah Svendsen, Special Projects Coordinator of BOA; Jessica Filler, General Counsel of BOA; and Tammi Florentz, recording secretary; Rick Jensen, President of the Trail of Governors Foundation; Jason Hancock, Director of Legislative Research Council; Journalist Bob Mercer, KELO and Arpan Lobo, Capital Journal.

Call to Order and Roll Call

Chairman Tim Engel called the meeting to order at 10:00 a.m. Roll was taken. Chairman Engel announced that a quorum was present.

Approval of Agenda

Chairman Engel asked that the following be added to the agenda:

- Legislative Research Council Director Jason Hancock to present on modifications to doors and the addition of card reader door locks for the House and Senate Chambers and committee rooms.

A motion was made by Commissioner Hansen, seconded by Commissioner Pat Miller, to approve the agenda as amended. Motion carried unanimously.

Approval of the Minutes

Commissioner Hansen, seconded by Commissioner Sahr, to approve the minutes from the May 31, 2018 meeting as presented. Motion carried unanimously.

General Conflict of Interest Disclosure

Chairman Engel inquired whether any commissioners have a conflict of interest to disclose.

Commissioner Pat Miller disclosed that she serves on the Board of Directors for the Trail of Governors Foundation.

Adoption of Code of Conduct and Conflict of Interest Policy

Chairman Engel went over the Code of Conduct and Conflict of Interest model policy that was adopted by the Board of Internal Controls for use by State boards and commissions. He suggested the last two sentences in the “Purpose” section (underlined) be removed from the policy as adopted.

A motion was made by Commissioner Hansen to adopt the model Code of Conduct and Conflict of Interest Policy, but with the last two underlined sentences in the “Purpose” section removed. The motion was seconded by Commissioner Pat Miller. Motion carried unanimously.

Informational

Projects Updates – Leah Svendsen, BOA

- a) Art for State Buildings Sculpture. Ms. Svendsen showed the Commission a conceptual drawing of a sculpture proposed to be temporarily displayed in Hilgers Gulch. There was discussion concerning whether Commission approval is required for placement of the sculpture. Staff and the Commission agreed to continue those discussions.
- b) Governor’s Grove Clean Up. Ms. Svendsen reported on the maintenance of the Governor’s Grove area, including the clean up and placement of certain Governor commemorative markers.
- c) North Lawn Fence. Ms. Svendsen reported the fence is nearly completed and invited the Commissioners to take a look.

Trail of Governors update and statue placement – Trail of Governors Foundation

Rick Jensen, President of the Trail of Governors Foundation (TOGF), gave a brief description of proposed statue locations of Governors Daugaard, Elrod, and Gubbrud to be unveiled at a ceremony in the Capitol Rotunda on June 14, 2019. The TOGF Board of Directors is proposing the location for Governor Daugaard’s statue on state property on the east side of Capitol Lake close to the intersection of Broadway Avenue and Governors Drive.

Because Commissioner Pat Miller was abstaining due to her conflict as a TOGF board member, there was not a quorum available to vote on this item. Chairman Engel deferred the vote to a future date TBD.

Card Reader Locks- Legislative Research Council

Jason Hancock, Director of the Legislative Research Council (LRC), proposed the installation of electronic locks and card readers to specific doors on 3rd and 4th floors. Rooms included in the proposal are the LRC main office, committee rooms 412, 413, and 414 in the Annex, one entrance to each of the House and Senate chambers, and to committee rooms 423 and 464 in the Capitol. The addition of this lock system would require slight modifications to the doors to add a lock box and small card reader on all doors as well as handles on the chamber doors. Discussion was had by the Commission concerning whether these additions would change the historic appearance of the door plates and knobs with the state seal. Mr. Hancock indicated the additions will not alter the knobs and the handle will be matched to and placed on the existing door plate.

Leah Svendsen, Special Projects Coordinator of the BOA will take photos of the doors affected and send to the commissioners for review. Action will be taken at a future meeting, date TBD.

Public Comments

None.

Other Business

Commissioner Carla Sahr, member of the South Dakota Federation of Republican Women (SDFRW), announced the SDFRW will be turning over responsibility for maintenance of the First Lady Inaugural Gown Display, located on the first floor of the Capitol, to the SD Historical Society for upkeep.

Adjournment

Motion to adjourn was made by Commissioner Pat Miller, and seconded by Commissioner Hansen. Motion carried unanimously. Meeting adjourned at approximately 10:32 a.m.

Code of Conduct and Conflict of Interest Policy for Use By State Authority, Board, Commission, and Committee Members

Purpose

The purpose of this code of conduct and conflict of interest policy (“Code”) is to establish a set of minimum ethical principles and guidelines for members of state authorities, boards, commissions, or committees when acting within their official public service capacity. With the exception of those under the purview of the Unified Judicial System, this Code applies to all appointed and elected members of state authorities, boards, commissions, and committees (hereinafter “Boards” and “Board member(s)”).

Conflict of Interest for Board Members

Board members may be subject to statutory restrictions specific to their Boards found in state and federal laws, rules and regulations. Those restrictions are beyond the scope of this Code. Board members should contact their appointing authority or the attorney for the Board for information regarding restrictions specific to their Board.

General Restrictions on Participation in Board Actions

A conflict of interest exists when a Board member has an interest in a matter that is different from the interest of members of the general public. Examples of circumstances which may create a conflict of interest include a personal or pecuniary interest in the matter or an existing or potential employment relationship with a party involved in the proceeding.

Whether or not a conflict of interest requires a Board member to abstain from participation in an official action of the Board depends upon the type of action involved. A Board’s official actions are administrative, quasi-judicial or quasi-legislative.

A quasi-judicial official action is particular and immediate in effect, such as a review of an application for a license or permit. In order to participate in a quasi-judicial official action of the Board, a Board member must be disinterested and free from actual bias or an unacceptable risk of actual bias. A Board member must abstain from participation in the discussion and vote on a quasi-judicial official action of the Board if a reasonably-minded person could conclude that there is an unacceptable risk that the Board member has prejudged the matter or that the Board member’s interest or relationship creates a potential to influence the member’s impartiality.

A quasi-legislative official action, also referred to as a regulatory action, is general and future in effect. An example is rule-making. If the official action involved is quasi-legislative in nature, the Board member is not required to abstain from participation in the discussion and vote on the action unless it is clear that the member has an unalterably closed mind on matters critical to the disposition of the action.

Administrative actions involve the day-to-day activities of the Board and include personnel, financing, contracting and other management actions. Most of the administrative official actions of a Board are done through the Board's administrative staff. To the extent Board members are involved, the conflict of interest concern most frequently arises in the area of state contracting which is addressed in more detail below. If issues arise that are not directly addressed by this Code, the Board member should consult with the attorney for the Board.

"Official action" means a decision, recommendation, approval, disapproval or other action which involves discretionary authority. A Board member who violates any of these restrictions may be subject to removal from the Board to which the member is appointed.

Contract Restrictions

There are federal and state laws, rules and regulations that address conflict of interest for elected and appointed Board members in the area of contracts. As an initial matter, a Board member may not solicit or accept any gift, favor, reward, or promise of reward, including any promise of future employment, in exchange for recommending, influencing or attempting to influence the award of or the terms of a state contract. This prohibition is absolute and cannot be waived.

Members of certain Boards are required to comply with additional conflict of interest provisions found in SDCL Chapter 3-23 and are required to make an annual disclosure of any contract in which they have or may have an interest or from which they derive a direct benefit. The restrictions apply for one year following the end of the Board member's term. The Boards impacted by these laws are enumerated within SDCL 3-23-10. For more information on these provisions, see the State Authorities/Boards/Commissions page in the Legal Resources section of the Attorney General's website at: <http://atg.sd.gov/legal/opengovernment/authorityboardcommission.aspx>.

Absent a waiver, certain Board members are further prohibited from deriving a direct benefit from a contract with an outside entity if the Board member had substantial involvement in recommending, awarding, or administering the contract or if the Board member supervised another state officer or employee who approved, awarded or administered the contract. With the exception of employment contracts, the foregoing prohibition applies for one year following the end of the Board member's term. However, the foregoing prohibition does not apply to Board members who serve without compensation or who are only paid a per diem. See SDCL 5-18A-17 to 5-18A-17.6. For more information on these restrictions see the Conflict of Interest Waiver Instructions and Form on the South Dakota Bureau of Human Resources website at: <http://bhr.sd.gov/forms/>.

Other federal and state laws, rules and regulations may apply to specific Boards. For general questions regarding the applicability of SDCL Chapter 3-23 or other laws, a Board member may

contact the attorney for the Board. However, because the attorney for the Board does not represent the Board member in his or her individual capacity, a Board member should contact a private attorney if the member has questions as to how the conflict of interest laws apply to the Board member's own interests and contracts.

Consequences of Violations of Conflict of Interest Laws

A contract entered into in violation of conflict of interest laws is voidable and any benefit received by the Board member is subject to disgorgement. In addition, a Board member who violates conflict of interest laws may be removed from the Board and may be subject to criminal prosecution. For example, a Board member may be prosecuted for theft if the member knowingly uses funds or property entrusted to the member in violation of public trust and the use resulted in a direct financial benefit to the member. See SDCL 3-16-7, 5-18A-17.4, and 22-30-46.

Retaliation for Reporting

A Board cannot dismiss, suspend, demote, decrease the compensation of, or take any other retaliatory action against an employee because the employee reports, in good faith, a violation or suspected violation of a law or rule, an abuse of funds or abuse of authority, a substantial and specific danger to public health or safety, or a direct criminal conflict of interest, unless the report is specifically prohibited by law. SDCL 3-16-9 & 3-16-10.

Board members will not engage in retaliatory treatment of an individual because the individual reports harassment, opposes discrimination, participates in the complaint process, or provides information related to a complaint. See SDCL 20-13-26.

Anti-Harassment/Discrimination Policy

While acting within their official capacity, Board members will not engage in harassment or discriminatory or offensive behavior based on race, color, creed, religion, national origin, sex, pregnancy, age, ancestry, genetic information, disability or any other legally protected status or characteristic.

Harassment includes conduct that creates a hostile work environment for an employee or another Board member. This prohibition against harassment and discrimination also encompasses sexual harassment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexually harassing nature, when: (1) submission to or rejection of the harassment is made either explicitly or implicitly the basis of or a condition of employment, appointment, or a favorable or unfavorable action by the Board member; or (2) the harassment has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Harassment or discriminatory or offensive behavior may take different forms and may be verbal, nonverbal, or physical in nature. To aid Board members in identifying inappropriate conduct, the following examples of harassment or discriminatory or offensive behavior are provided:

- Unwelcome physical contact such as kissing, fondling, hugging, or touching;

- Demands for sexual favors; sexual innuendoes, suggestive comments, jokes of a sexual nature, sexist put-downs, or sexual remarks about a person's body; sexual propositions, or persistent unwanted courting;
- Swearing, offensive gestures, or graphic language made because of a person's race, color, religion, national origin, sex, age or disability;
- Slurs, jokes, or derogatory remarks, email, or other communications relating to race, color, religion, national origin, sex, age, or disability; or
- Calendars, posters, pictures, drawings, displays, cartoons, images, lists, e-mails, or computer activity that reflects disparagingly upon race, color, religion, national origin, sex, age or disability.

The above cited examples are not intended to be all-inclusive.

A Board member who is in violation of this policy may be subject to removal from the Board.

Confidential Information

Except as otherwise required by law, Board members shall not disclose confidential information acquired during the course of their official duties. In addition, members are prohibited from the use of confidential information for personal gain.

Reporting of Violations

Any violation of this Code should be reported to the appointing authority for the Board member who is alleged to have violated the Code.

This Code of Conduct and Conflict of Interest Policy was adopted by the State Board of Internal Control pursuant to SDCL § 1-56-6.