

Senate Interim Investigation Committee 2020 Report to Senate



Study Scope and Authority

The Senate Interim Investigation Committee was created on April 2, 2020, by the South Dakota Legislative Research Council Executive Board to investigate the conduct of the Senate President Pro Tempore and Senate Majority Leader during the 37th legislative day. The interim committee was selected in accordance with Senate Rule S8-1 and consisted of nine senators, five from the majority party, including the chair, all chosen by the Senate majority caucus, and four from the minority party, including the vice chair, all chosen by the Senate minority caucus. This interim committee was granted the authority found in the Interim Committee Rules of Procedure #20 and directed to follow the processes and procedures found in Chapter 8 of the Senate Rules from the 2020 legislative session and to submit its report to the Senate, no later than June 30, 2020.

Listing of Committee Members

Members of the committee were Senators Arthur Rusch, Chair; Senator Troy Heinert, Vice Chair; Senators Jim Bolin, Red Dawn Foster, Craig Kennedy, Jim Stalzer, Margaret Sutton, Jim White, Susan Wismer.

Meeting Dates

The committee met April 21, 2020, recessed and continued on April 24, 2020.

Summary of Investigation

The committee focused its investigation on determining whether there was a violation in three areas:

- 1) Joint Rule 1A-3 Alcoholic beverages prohibited;
- 2) SDCL 2-4-14(2) Disorderly conduct in the immediate view of the Senate or the House of Representatives, and directly tending to interrupt its proceedings; and
- 3) Joint Rule 1B-1 Maintenance of ethical standards.

The committee investigated the events that occurred during the final hours of the 37th legislative day of the 2020 session. The committee spent most of two days conducting this investigation. On the first, April 21, 2020, the committee viewed the available audio/video file as provided by South Dakota Public Broadcasting (SDPB). In addition, Lieutenant Jon Stahl, Highway Patrol, appeared before the committee and provided any footage from the security cameras of the interior and exterior areas of the Capitol building that was requested by committee members.

On the second day, April 24, 2020, the committee heard from the following legislators who were in the building and could offer firsthand knowledge of what they saw and heard: Representatives Steven Haugaard, Lee Qualm, Jamie Smith, Oren Lesmeister, and Tony Randolph. There were other witnesses who were willing to testify, but the committee felt their testimony would have been cumulative of what had already been heard. Pursuant to Senate Rule S8-4(3), the complained against members were allowed to confront and question the witnesses who testified.

In addition, Senator Phil Jensen who made the motion for a disciplinary committee to investigate the Majority Leader, found on page 574 of the 2020 Senate Journal, was allowed to present an argument in support of his motion, and Attorney Marty Jackley, who represented the complained against members, was allowed to argue in support of their position.

Also on the second day, the Senate President Pro Tempore and Senate Majority Leader appeared and extended their apologies and regrets for what happened.

Findings of Fact

- 1) The Senate convened at 11:00 a.m. on Monday March 30th, 2020, the 37th legislative day.
- 2) That, thereafter, during the course of the day, the Senate recessed and reconvened at various times not material to these issues.
- 3) The Senate reconvened at 7:15 p.m. but was at ease for the majority of the time until 2:10 a.m. to await House action on various pending bills.
- 4) During that time, the President Pro Tem and Majority Leader then went to a location off the grounds of the Capitol where they imbibed alcoholic beverages.
- 5) The House completed action on the pending bills at 1:03 a.m. on Tuesday March 31, 2020.
- 6) A phone call was then made summoning the President Pro Tem and Majority Leader to return to the Capitol.
- 7) At 1:23 they entered the back door of the Capitol
- 8) At 1:24 they got off the elevator on the 4th floor of the Capital.
- 9) From 1:24 to 1:33 they were in Room 413.
- 10) At 1:33 the President Pro Tem went to Room 499 (where there is no camera).
- 11) At 1:38 the President Pro Tem went back to room 413 and then returned to room 499 with the Majority Leader.
- 12) At 2:06, the President Pro Tem and Majority Leader returned from room 499 to room 413.
- 13) From 2:27 to 2:31 they participated in a conference committee in room 412.
- 14) From 1:24 until the adjournment of the Legislature, they were observed at various times by Representative Steven Haugaard, Representative Lee Qualm, Representative Jamie Smith, Representative Oren Lesmeister, and Representative Tony Randolph.
- 15) All of the witnesses who observed them during that time believed they were impaired.
- 16) None of the witnesses observed any alcohol in the Capitol building.
- 17) None of the witnesses observed any disorderly conduct by the President Pro Tem or Majority Leader in the immediate view of the Senate or the House of Representatives, which directly interrupted the proceedings.

Recommendation of the Committee

The committee believes there was no violation of JR 1A-3 or SDCL 2-4-14(2), but that there was a violation of Joint rule 1B-1, which requires all legislators to refrain from conduct that is unbecoming to the Legislature and inconsistent with a legislator's obligation to maintain the trust and respect of the people we serve.

The committee recommends the following discipline pursuant to Senate Rule S8-7. The committee unanimously recommends the following admonition and caution be adopted by the Senate:

Although it does not appear that there was any violation of the law or of Legislative Joint Rule 1A-3 on the evening of the 37th legislative day because there was no consumption of alcohol within the area of the Capitol building, we believe your presence in the Capitol on that legislative day while you appeared to be impaired, violated Joint Rule 1B-1 which requires all legislators to refrain from conduct that is unbecoming to the Legislature and inconsistent with a legislator's obligation to maintain the trust and respect of the people we serve. Therefore, you are hereby admonished and cautioned to in the future not appear in the capitol when questions could be raised as to your state of sobriety.

Respectfully submitted,

/s/ ARTHUR RUSCH
Senator Arthur Rusch, Chair

/s/ TROY HEINERT
Senator Troy Heinert, Vice Chair

/s/ JIM BOLIN
Senator Jim Bolin

/s/ RED DAWN FOSTER
Senator Red Dawn Foster

/s/ CRAIG KENNEDY
Senator Craig Kennedy

/s/ JIM STALZER
Senator Jim Stalzer

/s/ MARGARET SUTTON
Senator Margaret Sutton

/s/ JIM WHITE
Senator Jim White

/s/ SUSAN WISMER
Senator Susan Wismer