

MINUTES

Senate Interim Investigation Committee



Senator Arthur Rusch, Chair
Senator Troy Heinert, Vice Chair

**First Meeting, 2020 Interim
Tuesday, April 21, 2020**

**Room 414 – State Capitol
Pierre, South Dakota**

The first meeting of the Senate Interim Investigation Committee was called to order by Senator Arthur Rusch at 9:00 a.m. (CST) in Room 414 of the State Capitol, Pierre, South Dakota. A quorum was determined with the following members answering roll call via Microsoft Teams: Senators Jim Bolin, Red Dawn Foster, Craig Kennedy, Jim Stalzer, Margaret Sutton, Jim White, Susan Wismer, Troy Heinert, Vice Chair, and Arthur Rusch, Chair.

Staff members present included Sue Cichos, Interim Director; Scott Darnall, IT Manager; Wenzel Cummings, Code Counsel; Dave Ortbahn, Chief Research and Legal Analyst; and Rachael Person, Senior Legislative Secretary.

NOTE: For the purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office. This meeting webcast live. The archived webcast is available at the LRC website at sdlegislature.gov.

Oath

Ms. Kay Johnson, Secretary of the Senate, administered the oath to the members of the committee in accordance with [Senate Rule 8-3](#).

Opening Remarks

Senator Rusch opened the meeting by summarizing the purpose of the committee. On the early morning of March 31, 2020, at approximately 3:30 a.m., Senator Phil Jensen moved to convene a disciplinary committee to investigate claims that Senator Langer was intoxicated and was tending to interrupt the proceedings of both the House and the Senate adjacent to [SDCL 2-4-14 \(2\)](#). As Senator Jensen's motion was an oral motion and not a written motion signed by two senators, the President of the Senate ruled that the motion was out of order. The President's ruling was appealed; however, the majority of the members present voted to uphold the ruling of the President. Subsequently, a written motion by Senator Jensen was presented to the President by an agent on Senator Jensen's behalf, but was not signed by two senators. Due to the 37th legislative day being held electronically, most of the members of the Senate were not physically present making it an impossibility to gather two signatures at that time and the Senate adjourned without taking further action on the motion.

On April 2, 2020, the Executive Board passed a motion to create a committee to investigate the conduct of President Pro Tempore Brock Greenfield and Senate Majority Leader Kris Langer during the 37th legislative day. The interim committee was to consist 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. The committee was granted authority found in the Interim committee's [Rules of Procedure #20](#) and was to follow the processes and procedures found in [Chapter 8](#) of the Senate Rules from the 2020 legislative session, and submit its report to the Senate no later than June 30, 2020.

Due to the COVID-19 pandemic health guidelines, Senator Rusch stated that the committee would not be able to comply to all of the rules contained in Chapter 8 of the Senate Rules, specifically as it relates to meeting in the

Capitol. However, it was his intention to comply with the rules as much as possible. The inability to meet in the Capitol created a difficulty when it came to the material broadcasted to the public. For other Senate committee meetings, the only version of the meetings available to the public is the audio version. As this committee would be viewing video evidence from the 37th legislative day, Senator Rusch asked the committee members if they would prefer to have both the audio and video version of the meeting broadcasted and archived, or only the audio version.

Senator Troy Heinert highlighted the importance of being as transparent as possible in the proceedings.

Senator Craig Kennedy echoed Senator Heinert's statements pointing out that if the meeting were taking place in the Capitol building the public would have the opportunity to be in the room viewing the same footage the committee was able to see. Senator Kennedy stated that due to the fact that committee would be reviewing the evidence remotely, it would be appropriate for the public to be able to view the same material as the committee.

Senator Susan Wismer also commented that the committee should make every effort to keep the circumstances as identical to what they would be if the meeting were being held in the Capitol building.

As the majority of the committee stated their preference to make the audio and video versions of the meeting available, both versions will be available and archived.

Senator Rusch then outlined his intention for how the meeting would proceed. Senator Rusch said he intended to divide the meeting into an evidence and then a decision-making phase, he would allow Senator Jensen to make a statement or argument on behalf of his motion pursuant to [Senate Rule 8-4 \(3\)](#), and he would allow Senators Greenfield and Langer, or their counsel, to present an argument on their behalf. Senator Rusch also commented that while the committee listened to testimony, pursuant to Senate Rule 8-4 (3), Senators Greenfield and Langer, or their counsel, would be specifically allowed to confront or cross-examine any witnesses who appeared against them.

Mr. Marty Jackley, Attorney at Law, introduced himself and stated he was making a special appearance on behalf of Senators Greenfield and Langer and objected to the process, saying jurisdiction and authority did not exist. Mr. Jackley cited [SDCL 2-9-4](#) and said it does not authorize this type of proceeding. He added that due process issues existed and if proper jurisdiction and procedure was not followed, the courts may need to get involved.

Senator Rusch overruled Mr. Jackley's objection.

Video Footage

The committee proceeded to view the video footage from the 37th legislative day provided by South Dakota Public Broadcasting (SDPB) focusing on the time frame from 12:00 a.m. to approximately 4:00 a.m. During this time, the Senate spent a majority of time at ease, but conversations could be heard at various points in the video. Following the SDPB video, the committee viewed video footage, provided by the South Dakota Highway Patrol, of committee rooms 412 and 413, the lobby outside of the committee rooms, the backdoor of the Capitol.

Prior to the viewing of the footage from the Highway Patrol, Mr. Jackley raised an objection, citing the [Attorney General opinion 17-06 December 20, 2017](#), as it pertains to legislative limitations of powers when it comes to committees, including the Executive Board. Mr. Jackley stated the Highway Patrol footage was not a public record, it was not provided to him prior to the day's proceedings, and therefore was a direct due process violation. He asked the committee to base their decision on the SDPB video and that the disciplinary proceedings be dismissed.

Senator Rusch overruled Mr. Jackley's objection.

Senator Heinert asked to see portions of the video in room 413 around 1:25 a.m. when the Senate came back to order after being at ease for an extended period of time, and at 2:20 a.m. prior to the start of the conference committee. Following the footage from room 413, the committee matched footage from the adjoining room 412 to the timeline of the proceedings in room 413. Next, the committee watched footage from the lobby outside rooms 413 and 414, noting that Senators Greenfield and Langer walked into conference room 499, stayed in that room for about half an hour and then returned to room 413. Senator Heinert then asked to see the same lobby footage at about 1:20 a.m., stating that on the SDPB video during that time a statement was made that the whereabouts of the leaders was unknown. On the lobby footage, Senators Greenfield and Langer can be seen exiting the elevator on the fourth floor at 1:24 a.m. Senator Heinert then asked for camera angles from the parking lot and the back door which showed the senators being dropped off at 1:22 a.m., and entering the building at 1:23 a.m.

Discussion of Witnesses

After viewing the video footage, the committee moved to the decision of who would be allowed to testify as witnesses. Senator Rusch and a majority of the members stated their desire to avoid hearing cumulative testimony.

Senator Heinert voiced his concerns over limiting who would be able to provide testimony stating that if anyone had recollections or any form of interaction with Senators Greenfield or Langer, they should be allowed to provide that information to the committee.

Senator Kennedy commented that the committee had no knowledge of what each person willing to testify had to say and they had no rational basis for pre-deciding who would be given an opportunity to testify.

Senator Wismer said it was important to hear from the members involved in the conference committee as none of the members of the Interim Investigation Committee were physically present at the time and the complaint was made after the conference committee took place.

Mr. Jackley stated that any evidence other than the video footage would be cumulative testimony and warned the committee that extending the proceedings would continue to raise questions of fairness, jurisdiction, and due process. Mr. Jackley asked that if the committee proceeded with witness testimony that he would have broad cross examination authority of every witness who testified much as he would in a criminal proceeding. He also requested that any witnesses testifying would be under sequestration order, be placed under oath, and any statements submitted be under oath subject to the penalties of perjury.

Senator Rusch assured Mr. Jackley he would allow broad cross examination authority, and he would review the process of sequestration and placement under oath.

Senator Kennedy suggested those wishing to testify submit a statement of the information they intended to present, and the statements be circulated to the committee members to decide which testimonies may be cumulative.

Senator Rusch agreed with Senator Kennedy's suggestion and asked staff members from the Legislative Research Council to gather the information for the committee members.

Recess

Senator Rusch announced that the committee would go into recess until 9:00 a.m., Friday, April 24, 2020, and at 1:43 p.m., the committee recessed.

Reconvene

The Senate Interim Investigation Committee reconvened Friday, April 24, 2020, at 9:00 a.m.

Discussion of Violations

Senator Rusch stated that based on the allegations, the following rules presented the possible violations the committee needed to address:

- [Legislative Rule 1A-3](#). **Alcoholic beverages prohibited.** No alcoholic beverage, beer, wine, or other beverage containing alcohol may be stored or consumed in any area of the Capitol that is under the control of the Legislature.
- [SDCL 2-4-14 \(2\)](#). Disorderly conduct in the immediate view of the Senate or the House of Representatives, and directly intending to interrupt its proceedings.
- [Legislative Rule 1B-1](#). **Maintenance of ethical standards.** The people of South Dakota require that their legislators maintain the highest of moral and ethical standards as such standards are essential to assure the trust, respect and confidence of our citizens. Legislators have a solemn responsibility to avoid improper behavior and refrain from conduct that is unbecoming to the Legislature or that is inconsistent with the Legislature's ability to maintain the respect and trust of the people it serves. While it is not possible to write rules to cover every circumstance, each legislator must do everything in his or her power to deal honorably with the public and with his or her colleagues and must promote an atmosphere in which ethical behavior is readily recognized as a priority and is practiced continually, without fail.

Senator Rusch commented that he would be strict on limiting the testimony to those three issues. Prior to the subsequent testimonies, Senator Rusch inquired whether each testifier was aware of any alcoholic beverages being stored or consumed in the Capitol building the night of the allegations, or if the testifiers personally witnessed any disorderly conduct taking place in front of the Senate or the House of Representatives. None of the testifiers presented any evidence relating to the first two rules, therefore, the committee narrowed their investigation to evidence pertaining to Legislative Rule 1B-1.

Statements

Senator Langer offered the following statement to the committee: "Thank you Mr. Chair and members of the committee. During the Senate's break we left the Capitol and had alcohol while waiting for the House chamber to finish their legislation. We wish to apologize for this bad judgement on our part and for any delay this may have brought about for other members. Please accept our deepest apology and know that we are committed to continuing to serve with you in the further interest of our state and its citizens."

Senator Greenfield offered the following statement to the committee: "I would echo the sentiments shared by Senator Langer. I too apologize. I am truly sorry for even placing myself in a setting that allowed for questions as to my judgment or my state of mind. Moreover, I am sorry for the time and energy that so many people have spent dealing with this matter. Especially in these current times, there's important work to do for the people of South Dakota, and I am hopeful that we can all focus on moving forward. I thank you, and thanks for hearing me today."

Mr. Jackley spoke on behalf of the senators and said that based upon the statements given by Senator Langer and Senator Greenfield, the videos, the fact that there were no blood tests, preliminary breath tests (PBTs), or evidence of drinking occurring at the Capitol, the committee should conclude its proceedings.

Senator Rusch replied the statements were admissions of improper behavior on their part and he would allow those wishing to testify the opportunity to do so.

Testimony

Senator Rusch administered the oath to each individual who offered testimony.

Speaker of the House Steven G. Haugaard, offered a breakdown of the timeline of the events occurring that night, including a text message from himself to Lieutenant Governor Larry Rhoden inquiring as to the whereabouts of Senators Langer and Greenfield. He also presented the committee with a description of a meeting that took place between himself, Representative Qualm, the Lieutenant Governor, and Senators Langer and Greenfield in room 499, as there was no video or audio footage from that room due to a lack of cameras.

Speaker Haugaard stated the senators were unable to take care of business, they were unable to effectively engage in the process, and their behavior and conduct caused significant delays in proceedings.

Senator Jim Stalzer remarked that Speaker Haugaard texted the Lieutenant Governor at 1:15 a.m. and the video shows the senators arriving back on the fourth floor at 1:25 a.m. which created only a ten-minute delay.

During his cross examination, Mr. Jackley asked Speaker Haugaard why he did not request a PBT test or a blood test. He pointed out that no allegations were brought against Senator Greenfield that night. Mr. Jackley also questioned Speaker Haugaard on the timeline of events, stating the House of Representatives concluded its work and went into recess at approximately 1:03 a.m., Speaker Haugaard texted the Lieutenant Governor at 1:15 a.m., Representative Qualm tried to call Senator Greenfield at 1:17 a.m., and the senators were shown walking into the building at 1:23 a.m., making the delay a twenty-minute delay.

Speaker Haugaard responded that in the end, it was an hour delay due to the meeting they needed to hold in room 499. He disagreed with Mr. Jackley that the video was the best evidence, stated it was not his responsibility to ask for a blood test or PBT, and the senators brought great disrespect to the Legislature with their actions.

Representative Lee Qualm agreed with Speaker Haugaard's testimony. He highlighted that the purpose of the meeting in room 499 was to get the two senators to understand what they needed to do to proceed with business and the conversation was between himself, Speaker Haugaard, and the Lieutenant Governor, as neither of the senators were capable of carrying on a conversation.

Representative Jaime Smith commented that what he witnessed is accurate with the testimonies given by Speaker Haugaard and Representative Qualm. He mentioned his interaction with the senators was limited but they appeared to be under the influence of alcohol and the most important thing to come out of this committee would be the truth of what occurred that day.

Representative Tony Randolph was one of the house members appointed to the conference committee which took place between chosen members of the House and members of the Senate to resolve differences in the amendments made to HB 1298. Representative Randolph said during the committee he was sitting close to the senators and could smell the distinct smell of alcohol coming from their direction. Their speech was also heavy and slurred.

Mr. Jackley asked Representative Randolph if he thought about requesting a blood test or a PBT. Mr. Jackley stated he was not intending to be critical of Representative Randolph, but he wanted to emphasize that no complaint was made against Senator Greenfield that night, nor was he given an opportunity to defend himself.

Representative Oren Lesmeister was also a member of the conference committee which took place in Room 412. Representative Lesmeister interacted with the senators as they were coming off the elevator at 1:23 a.m. and said at that point he realized they were intoxicated.

Senator Susan Wismer asked Representative Lesmeister if he could provide a description of what transpired during the conference committee as the security footage from that room did not include audio and conference committees are not recorded. Senator Wismer said the conference committee was an important piece of information as Senators Greenfield and Langer were acting on behalf of the entire Senate.

Representative Lesmeister replied that during the conference committee, Senator Greenfield was in better shape than he was upon first returning to the Capitol and did most of the talking as Senator Langer still had very slurred speech and was unable to finish sentences. The committee resolved the differences between the two chambers quickly and both went on to complete their business for the day.

Closing Statements

Mr. Jackley and Senator Jensen were offered the opportunity to make closing statements.

Senator Jensen told the committee Senator Greenfield lied by saying they had not indulged, and it was the Lieutenant Governor's responsibility to correct this lie. Also, the video showed the Lieutenant Governor trying to quiet Senator Langer at different intervals in the direct view of the Senate. Therefore, the behavior of the senators was disruptive in relation to SDCL 2-4-14 (2) and not just Legislative Rule 1B-1.

Mr. Jackley suggested to the committee that the actions of Senators Greenfield and Langer on the night of the 37th legislative day did not rise above the level of a reprimand and at most an admonition. He stated the committee's job was to be fair on hearing the evidence, which they did, and they should do the right thing by Senators Greenfield and Langer. It was not right for them to leave the Capitol and have a drink, which they admitted to and apologized for. Mr. Jackley asked the committee to dismiss the complaint and thanked the committee on the behalf of Senators Greenfield and Langer for the attentiveness shown to the situation.

The following motion was made Senator Bolin, seconded by Senator White, entitled "A Statement of Admonition." 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.

A motion was made by Senator Kennedy, seconded by Senator Wismer, to amend Senator Bolin's Statement of Admonition by changing the word "admonition" to "censure".

Senator Kennedy said under [Senate Rule 8-7](#) the options for the committee were expulsion, censure, discipline, or exoneration. He stated admonition was not in their scope of authority unless the committee was viewing it as a form of discipline and under the evidence presented, the committee's disapproval should be more severe, and they should be criticizing the conduct that was observed. Senator Kennedy emphasized all legislators have the responsibility of promoting an atmosphere in which ethical behavior is readily recognized as a priority and is practiced continuously without fail.

Senator Bolin said an admonition was sufficient considering the statement of apology received earlier in the day.

Senator Sutton commented that while she disapproved of the conduct, it was the first time a situation like this occurred involving the two senators and a discipline and a censure was not necessary.

Senator Stalzer agreed with Senator Sutton and said an admonition falls under the definition of a discipline.

Senator Wismer stated she was in support of Senator Kennedy's amendment and objected to making the discipline just an admonition because of the damage to the institution this caused and the further damage to the institution that happens when it appears to the public that the legislature will not discipline or take such issues seriously. She added that the committee owed it to the public to demonstrate that such issues are taken seriously, and as it took so long for an apology to come forth that was outside the range of what should be expected from legislators.

The question being on Senator Kennedy's motion to amend Senator Bolin's Statement of Admonition by changing the word "admonition" to "censure". Motion failed on a roll call vote with 3 members voting AYE; 5 members voting NAY; and 1 excused. Voting AYE: Foster, Kennedy, and Heinert. Voting NAY: Bolin, Stalzer, Sutton, White, and Rusch. EXCUSED: Wismer

Senator Rusch mentioned a clear violation of 1B-1 existed. He agreed that the people of South Dakota have a right to expect better of their legislators and supported the motion that Senators Greenfield and Langer be admonished for their conduct.

The question being on Senator Bolin's Statement of Admonition. Motion passed unanimously on a roll call vote.

Senator Heinert thanked Senator Rusch, the committee, and those willing to present information. He said he appreciated Senators Greenfield and Langer coming forward and apologizing and commented on the respect he has for both of the senators, their willingness to serve their constituents, and their ability to work with members of the Legislature.

Senator Rusch echoed Senator Heinert's comments and said he appreciated the devotion and thought the committee gave to the situation.

Adjourn

The meeting was adjourned at 12:42 p.m. on April 24, 2020.