



MANITOWOC COUNTY

ETHICS BOARD

HEARING MINUTES

September 14, 2020

via Zoom conferencing

Meeting called to order at 2:10 p.m.

Roll Call: Katherine Reynolds, Tom Musial, Jay Muchin

Others in Attendance: Donald Zimmer, James Brey, Peter Conrad

Selection of Chair: For the purpose of conducting the hearing the Ethics Board elected member Reynolds to act as Chair of the Ethics Board.

Hearing on Ethics Complaint Filed by Manitowoc County Board Supervisor Donald Zimmer against Manitowoc County Board Chairman James Brey: The first order of business was to determine if the allegations by Mr. Zimmer against Mr. Brey, if true, would constitute improper conduct under the Ethics Code. After discussion, the Ethics Board came to a consensus that if the allegations were in fact true, it would constitute improper conduct and elected to proceed with a hearing.

Attorney Reynolds then conducted the hearing. Mr. Zimmer was given the opportunity to present evidence of his allegations against Mr. Brey. Mr. Zimmer testified that he appeared before the Common Council of the City of Manitowoc to provide comments regarding the Black Lives Matter movement during the public input portion of the Common Council's meeting. Mr. Zimmer testified that the purpose of his statement was to make a distinction between himself and the councilperson who represents the same electors as Mr. Zimmer. He further testified that when speaking he did use his title as a County Board Supervisor and made other references to being a County Board Supervisor. Mr. Zimmer testified that he was then notified of an upcoming Executive Committee meeting on August 6, 2020, and that before the Executive Committee meeting, he emailed Mr. Brey to establish what ethics code violation he was accused of. Mr. Zimmer testified that Mr. Brey did not respond. Mr. Zimmer testified that holding a meeting where the public could provide input showed that Mr. Brey was retaliating against his free speech rights because the public could and did say negative things about Mr. Zimmer. Mr. Zimmer testified that Mr. Brey knew that would be the case and it was Mr. Brey's intent to embarrass Mr. Zimmer – that was the retaliation. He further testified that Mr. Brey had other options than to call an Executive Committee meeting, for example, Mr. Brey could have filed an ethics complaint or brought the matter directly to the County Board. Mr. Zimmer testified that he had no proof that Mr. Brey retaliated other than his belief as such and that the calling of the Executive Committee meeting was proof in itself. Attorney Conrad assisted with providing questioning of Mr. Zimmer at the request of the Ethics Board.

Mr. Brey was then given the opportunity to provide a response. Mr. Brey testified that he is the chair of the Manitowoc County Board of Supervisors. He testified that he was present at the July

20, 2020 City of Manitowoc City Council meeting. Mr. Brey testified that Mr. Zimmer introduced himself as a County Board Supervisor and proceeded to chastise a City Council member for attending a Lakeshore United Visionaries meeting, which he alleged was affiliated with Black Lives Matter. Mr. Brey testified that he approached Mr. Zimmer before a County Board meeting regarding his input at the Common Council meeting and Mr. Zimmer's response was to call Mr. Brey a criminal too. Mr. Brey testified that after the July 2020 meeting, he received multiple inquiries from individuals regarding Mr. Zimmer's conduct as related to Mr. Zimmer's position as a County Board Supervisor. Mr. Brey testified that as a result of all of the inquiries he consulted with Corporation Counsel to discuss alternative options to review the matter. He testified that after consulting with Corporation Counsel, he chose to convene an Executive Committee meeting. Mr. Brey testified that he responded to Mr. Zimmer's email explaining that the intent of the Executive Committee meeting was to permit the Executive Committee to consider whether Mr. Zimmer's actions as a County Board Supervisor violated a County rule or Code. Mr. Brey testified that it was not his intention to retaliate against Mr. Zimmer and that public input was permitted at the Executive Committee meeting because almost all County committee meetings permit public input, including the County Board meeting. He testified that he did not seek out individuals to testify and that in fact the majority of people that spoke, spoke in favor of Mr. Zimmer. Mr. Brey testified that after hearing public input and reviewing the matter, the Executive Committee did not take any action regarding Mr. Zimmer. Attorney Conrad assisted with providing questioning of Mr. Brey at the request of the Ethics Board.

Both parties provided a closing statement that reiterated their previous testimony.

Ethics Board discussion on how to proceed. Section 30.29 of the Ethics Code provides that deliberations shall be held in closed session. Attorney Conrad acknowledged that the meeting agenda did not provide for a closed session. The Board therefore had two options, have all parties waive the requirement to deliberate in closed session or continue the hearing with a properly noticed closed session.

Adjournment: Motion was made by Musial to continue the hearing and adjourn until September 16, 2020 at 11:00 a.m. to allow for a properly noticed closed session, seconded by Muchin. Motion carried unanimously.