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MINUTES
SDHSAA Interim Committee

Senator Craig Tieszen, Chair
Representative Jim Bolin, Vice Chair

First Meeting
2015 Interim
June 26, 2015

Room 413
State Capitol
Pierre, South Dakota

The first meeting of the South Dakota High School Activities Association Interim Committee was called to order by **Senator Craig Tieszen** at 10:00 a.m. (CDT) in room 413 of the State Capitol.

A quorum was determined with the following members answering the roll call: Senator Craig Tieszen, Chair; Representative Jim Bolin, Vice Chair; Senators Jim Bradford, Larry Tidemann, and Bill Van Gerpen; and Representatives Julie Bartling (via telephone), Roger Hunt, Kris Langer, Tim Rounds, Tona Rozum, and Kyle Schoenfish.

Staff members present included Ms. Roxanne Hammond, Legislative Attorney; Ms. Clare Charlson, Principal Research Analyst; Mr. Jason Simmons, Senior Fiscal Analyst; and Ms. Cindy Tryon, Senior Secretary.

NOTE: For 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 was web cast live. The archived web cast is available at the LRC web site at <http://legis.sd.gov>.

Opening Remarks

Senator Craig Tieszen welcomed everyone to the meeting. Senator Tieszen said that over the years there have been many discussions during the Legislative Session regarding the South Dakota High School Activities Association (SDHSAA) and that he assumes those discussions are what led to the selection of this study topic.

Overview of Statutes Regarding SDHSAA

Ms. Roxanne Hammond, Legislative Attorney, distributed a document that included a listing of statutes regarding SDHSAA, judicial precedents, and information regarding surrounding states' activities associations (**Document #1**).

SDCL 13-36-4 gives the authority for high schools to belong to a voluntary and nonprofit association, such as SDHSAA, and can be found on the last page of document #1. SDHSAA is not specifically mentioned in this statute. SDCL 13-36-4 was created in 1964 and was amended in 1975, 1985, 1991, 2003, 2011, and 2014.

Ms. Hammond presented information regarding the other statutes that apply to SDHSAA. SDCL 13-36-5 states that the organization must be audited annually by the Department of Legislative Audit. SDCL 13-35-7 discusses interscholastic activities and mentions SDHSAA by name. This statute was

created in 1993 and amended in 2003. SDCL 13-36-8 was created in 2005 and allows seventh and eighth graders at private schools to participate in high school activities, if the school so chooses. SDCL 13-36-9 through 13-36-14 were all created in 2001 and legislate guidelines regarding concussions resulting from participation in school activities. In 2014, legislation was passed amending 13-36-4 to include SDHSAA in the open meeting laws.

SDCL 13-36-4 does give SDHSAA rule making authority and those rules are subject to approval by their board of directors. They do not go through the same rule making authority to which state agencies must comply. SDHSAA has a contractual relationship with the state but is not a state agency.

Ms. Hammond then explained some court cases or opinions that apply to the SDHSAA, included in document #1. SDHSIAA v. St. Mary's Inter-Parochial High School of Salem (1966) found that the statute requiring all accredited high schools in the state be eligible to join the association was valid.

In 1975, then Attorney General William Janklow gave an opinion that the SDHSIAA did not have proper authority to pass rules which have any legislative status or force.

Anderson v. SDHSAA (1976) found that the school districts joining the association did not constitute an unlawful redelegation of power and that the association is not a legislative creation, but rather, a contractual agreement.

Senator Tieszen asked if the Anderson decision reversed the Attorney General opinion written by William Janklow. Ms. Hammond explained that an Attorney General opinion does not have any power, so there was no need for a reversal. The Anderson decision did, however, set precedent that was different from Attorney General Janklow's opinion.

Representative Jim Bolin asked for more clarification on the difference between an agency and a contractual entity. Ms. Hammond provided an example of the LRC hiring a publishing company to publish the state laws for us. That publishing company is not a state agency, but merely a contractual entity doing work for a state agency. That same concept would apply to the SDHSAA.

And the final case that Ms. Hammond presented was Brugeman v. SD Chemical Dependency Counselor Certification Board (1997) where the South Dakota Supreme Court found that the CCB is an agency due to their exercise of state sovereignty by controlling licensure of practicing counselors in the state. Ms. Hammond pointed out that this finding may play an important role in the committees' future discussions.

Representative Bolin asked about the Simpkins case. Ms. Hammond did not include that in the list of precedents but the case was a high school student challenging the transfer student rule set by SDHSAA. The courts said that this is not a property right and the association does have the right to make rules regarding qualifications for participation.

Ms. Hammond then went through the questions outlined in the scope of this interim committee as approved by the Executive Board:

- How is the SDHSAA accountable to the legislative and/or the executive branch (DOE)?
- Does the SDHSAA exceed rule making authority and do they provide adequate public notice?
- Are there other associations with similar issues?
- Should schools be required to pay dues to this organization?
- What is their relationship and responsibility to the National Federation of High School Activities?
- What is their status under South Dakota law?

- Are they subject to open meeting laws?
- Is the one school/one vote policy of the organization valid?

Senator Larry Tidemann pointed out the use of the word “exceed” regarding the SDHSAA’s rule making authority. Ms. Hammond explained that these questions are based on the request for an interim study and that the committee is to try to answer these questions. Ms. Hammond added that if it is established that the association is exceeding their rights regarding rule making, the rules they have in place would be deemed void.

Ms. Hammond then proceeded to go through the information found in document #1 regarding how neighboring states work with their high school activities’ associations. Ms. Hammond thanked Ms. Lindsay Riter-Rapp, Attorney for the SDHSAA, for her assistance in gathering this information.

Nebraska has an activities association similar to South Dakota. There is no statute governing that association and it is strictly a private entity. No statute authorizes Nebraska’s association to spend money.

Minnesota has the State High School League which is a nonprofit voluntary association of high schools. The Minnesota schools delegate their control of activities by law and that law specifies how many people must serve on the governing board.

In Iowa, the organization must be licensed by the Department of Education and be in compliance with the Department’s rules. The State of Iowa has much more control over the activities association than most of the other states.

In North Dakota, there is no state statute specifically governing the activities association, but there are some statutes regarding home schooled students.

The Montana High School Association is nonprofit and incorporated through statute. The law gives authority to the board to enter contracts and transact all financial business.

Wyoming has a private non-profit association funded by membership dues and gate receipts. There is no direct legislation, but the organization is mentioned throughout the code.

Representative Bolin asked if any of the states’ activities associations are directly under the authority of the Department of Education. Ms. Hammond said that because of the limited time, she had only researched neighboring states, so did not have the answer to that question at this time.

Representative Roger Hunt wondered about the rule making authority for these associations in other states. Ms. Hammond said that in comparison to the surrounding states, she did not find anything that said the associations must go through a formal rule making process at the state level. She added that she cannot say for certain that there are no states where the Department of Education oversees the rule making process.

Senator Tieszen invited Mr. Krogstrand to respond to some of the committee questions.

Mr. John Krogstrand, Assistant Executive Director, SDHSAA, said that all of the surrounding states are membership driven and their relationships to the Departments of Education are quite limited. The only states that do fall under the Department of Education are those that are very small geographically and need more funding in order to exist.

Senator Jim Bradford asked about the activities that cross state lines and who oversees those events. Mr. Krogstrand explained that specific executive staff within the association oversees those

events and works with the staff from the association in the other participating state. There is specific member driven policy that outlines the structure for these events and the associations work together to ensure the safety of the participants.

Representative Hunt asked if the State Board of Education reviews or controls any of the activities that fall under the SDHSAA. Mr. Krogstrand said that the Board of Education has no direct oversight regarding any of the activities. The SDHSAA Board is made up of representation selected by the member schools and the activities policies go through the SDHSAA Board.

South Dakota High School Activities Association Presentation

Mr. Wayne Carney, Executive Director, SDHSAA, joined Mr. Krogstrand at the testifier's stand for the informational PowerPoint presentation (**Document #2**). The SDHSAA is a membership driven association open to any accredited high school in the state. There are currently 181 schools that are members and each school is given one vote at the annual meeting. The Board of Directors consists of 9 members. There are 10 full-time staff and 2 part-time staff who work out of the office located in Pierre.

The association's budget has always been available to the public. The proposed budget begins with a hearing at the annual meeting in April. The final adoption is done at the June Board of Directors meeting. It is then posted on the SDHSAA's website in its entirety for public review.

Projected Revenues for 2015-16 are \$2.647 Million and Projected Expenses for 2015-16 are \$2.705 Million.

The revenues consist of 50.1% ticket revenues from state events; 14.5% general/misc/pass-through items; 13.4% sub-state basketball, volleyball, football, and wrestling; 11.1% corporate sponsors; 5.8% fees & dues; 3.3% media rights contracts; and 1.8% official ball contract with Baden.

The expenses consist of 37.2% direct costs of operation; 35.5% employee salaries & benefits; and 27.3% purchased services and association supplies.

Only six annual events actually see a profit, while 13 events lose money every year. The events where ticket sales revenues exceed expenses are Boys Basketball, Girls Basketball, Wrestling, Football, Track & Field, and Chorus and Orchestra. To view the complete budget for SDHSAA, go to <http://www.sdhsaa.com/Portals/0/PDFs/Handbook/Athletics/10-BudgetFees.pdf>.

The Department of Legislative Audit has been conducting an audit of the SDHSAA annually since 1976. Any findings or concerns reported by the Department of Legislative Audit are addressed and corrected by the Association.

The final portion of the PowerPoint presentation compared the memberships of the associations' governing boards for the neighboring states.

South Dakota's Board is made up of 9 members: 4 elected school administrators, 2 active school board members, 2 at-large school administrators, and one school administrator from a school whose population is a minimum of 50% Native American.

Nebraska's governing board is comprised of 8 school administrators from across the state based on geographical districts, board of directors members are elected by the membership.

Montana's board of directors has 7 members: 4 school administrators, 2 appointees – one by the Governor and one by the Department of Education, and one school board member elected by the State School Board Association.

Wyoming has a 19 member board: 16 school administrators from four geographic districts, 2 elected by the Wyoming School Boards Association, 1 from the staff of the Department of Education.

North Dakota has 7 board members elected from member school administrators.

Iowa is different in that they have several different associations overseeing different activities. School administrators make up most of the memberships of those boards.

Minnesota has a 20-member board of directors: 8 elected by school administrators based on geography and school size, 2 elected by members of the principals association, 4 elected to represent specific activity groups, 2 elected by the state school boards association, 4 members appointed by the Governor.

Mr. Carney distributed a handout that gives an in depth mission statement, lists the milestones observed by the Association since its inception in 1905, and lists all the members of the Board of Directors by year (**Document #3**).

Mr. Jason Uttermark, School Principal, Aberdeen and Chair of the SDHSAA Executive Board, joined Mr. Carney and Mr. Krogstrand at the testifier's table. Mr. Uttermark explained that the board goes through thorough and extensive research before making any rule changes or policy decisions and that the vote of the board almost always goes with the recommendations of the full membership.

Mr. Krogstrand added that the SDHSAA Board meetings are broadcast over the internet. Mr. Krogstrand said that a referral process has recently been enacted that allows a member to circulate a petition if there is a concern over policy adopted by the Board.

Senator Tieszen then opened the meeting to questions from the committee.

Representative Kyle Schoenfish pointed out that the projected expenses exceed the projected revenues and asked if there is concern regarding those numbers. Mr. Krogstrand explained that they are very conservative in projecting revenues because one weekend of bad weather during a state tournament can affect revenues greatly. The association does have a cushion to fall back on should the need arise.

Senator Bill Van Gerpen asked about where the authority to enact policy rests, is it with the Legislature, the SDHSAA, or the schools? The Legislature had input on concussions and drug abuse, but when it came to transgender policy the Legislature had no input. Mr. Krogstrand said that policy making is in the hands of the SDHSAA but if the Legislature chooses to pass legislation, then the association is bound by those statutes.

Senator Van Gerpen asked if any state funding was used when building the offices for the SDHSAA. Mr. Carney said that no state funding was used but that Mr. Marlin Goldhammer, past-Executive Director, built a financial reserve for the purpose of moving the SDHSAA to a new office building. That reserve has now been depleted and the SDHSAA is working toward replenishing that fund. No legislative authority was required to build the offices.

Representative Tona Rozum asked what precipitated the need to implement a policy regarding transgender students. Mr. Krogstrand had received a phone call from a member school that had an

individual competing in junior high level track and they were wondering what policy would apply when that student wanted to compete at the high school level.

The SDHSAA then took action to serve member schools by doing extensive research to prepare a policy regarding this issue. Over the next year, SDHSAA held public meetings, looked at what other states are doing, and gathered input from members. All of this information was put together and presented to the SDHSAA Board of Directors. It all started with a student who had a question.

Mr. Carney told about a legal conference he had attended that was conducted by the National Federation about five years ago and a State's Attorney from another state had talked about the eligibility of transgender students. Mr. Carney said that the SD delegation didn't think that would be an issue they would have to worry about, but it is an issue that now must be addressed.

Mr. Carney held up the magazine, "High School Today", which covers the legal standards regarding transgender students that are accepted nationwide. As of today, 33 state activities associations have adopted policies and guidelines regarding transgender students. The magazine has a list of the top 10 issues facing schools today, and transgender is number 7. The SDHSAA spent a lot of time working on this issue and making sure there is no violation of federal law. This was a topic on several meeting agendas and no one came in to speak to the issue. Mr. Carney continued saying that it was not until late December or early January before they learned there was an issue with the policy.

Representative Rozum asked about the concern over liability and civil rights. Mr. Krogstrand said that the liability comes in anytime special accommodations are made for a student during the school day, those accommodations need to carry over into the activities the student participates after the school day is over. He continued saying that they are not concerned about being sued by an individual student, but that they have to be sure they are in compliance with the Office of Civil Rights because their level of power is strong. The policy the SDHSAA developed is their interpretation of the Office of Civil Rights' requirements.

Senator Tieszen inquired about the National Federation. Mr. Krogstrand said that SDHSAA became a member of the National Federation of State Athletic Associations in 1923. This association includes all states and several Canadian provinces. Although the states can deviate from the national rules, there is a significant amount of benefits to belonging to the National Federation.

Representative Hunt referred to the magazine article listing the top 10 issues and asked if the SDHSAA has written policies regarding the other 9 issues listed in the article. Mr. Carney said that there may not be specific policy on each one, but there is some type of consideration regarding each issue. Representative Hunt followed up asking how the Association decides when a policy decision is left up to the school or when the Association sets the policy. Mr. Carney responded that the member schools let the Association know when they want a formal policy set by the Association.

Mr. Krogstrand explained that the Association's Executive Board members are very serious when making policy decisions and the transgender policy was only approved after lengthy research and study. Also, a survey was sent out to all the members for their input on the decision.

Representative Bolin asked about the Association's referral policy. Mr. Krogstrand said that the state school superintendents asked the Association to set up a process by which policy decisions can be referred. This process was set up when the issue of the Class A shot clock became a controversy.

In response to a question from Representative Bolin, Mr. Carney said that Association's staff members determined they were eligible to join the South Dakota Retirement System in July of 2003. The association does abide by the open government laws and the information regarding all the staff salaries and benefits are available to the public.

Representative Kris Langer asked what percentage of students are affected by the transgender policy. Mr. Krogstrand responded that a very small percentage, less than 1/10th of one percent and fewer than that will ever choose to participate in school activities. Mr. Carney added that they did have one student testify at their hearings, but watching the other states, it is most likely to continue to grow. Mr. Uttermark said that in the ten years he has been a principal, he has been aware of three students who were transgender.

Representative Tim Rounds asked about the substance abuse issues regarding school activities. Mr. Carney said that there are statutes regarding substance abuse and the member schools do not want the Association involved in tobacco and alcohol use policies. Each school has its own policy regarding students' use of alcohol and tobacco.

Committee Discussion

Senator Tieszen asked that each of the members of the committee briefly comment on what they would like to see this committee accomplish during the interim.

Senator Van Gerpen said that there needs to be more clarification on who is responsible for setting policies regarding our school's athletes.

Representative Schoenfish hopes to learn more about these issues so he is prepared for future discussions about the SDHSAA.

Representative Hunt thanked the representatives from the SDHSAA for giving a good base from which the committee can work. Representative Hunt hoped that there will be some public testimony at future meetings. He would also like to have more information on the National Federation and on some of the groups who were consulted when the SDHSAA made the transgender policy decision. Representative Hunt added that it is not the intent of the Legislature to take over the SDHSAA, but it is important to review the oversight of that association.

Representative Langer said that she wants to have a better understanding of just what role the Legislature plays regarding the SDHSAA.

Senator Tidemann thanked the LRC Staff and the SDHSAA representatives for the information presented at today's meeting. Senator Tidemann added that he wants to be sure that going forward everyone is mindful of taking care of each individual student, not just the schools as a whole.

Senator Bradford said that the committee needs to be careful that we don't get over involved in this process and forget that our function should be to help. It is good to learn, but we shouldn't get in their way.

Representative Rozum pointed out that this is much broader than just dealing with athletics and the committee needs to be sure to tie academics to the discussion. Representative Rozum added that she is concerned about the impact any decisions may have on individual rights. She would also like to see the committee discuss the issue of sending all the main tournaments to Sioux Falls, as there are several communities that can host these events.

Representative Rounds wondered if the legislature really wants more control over the SDHSAA or if they should be allowed to use the authority granted them under SDCL 13-16-4. Representative Rounds would like the committee to look at SDCL 13-32-9, which sets the substance abuse policy, and see if it needs some revisions.

Representative Bolin agreed with Representative Rozum regarding the issue of where the main school events are held. Representative Bolin wondered if the constituency of the SDHSAA is just the schools or if it is broader than that, and it is his hope that this committee will take a closer look at that question. Representative Bolin also thanked the SDHSAA staff and Ms. Hammond for their excellent informational presentations.

Senator Tieszen thanked the staff specially recognizing Ms. Hammond for the extensive work she did preparing for this meeting. He also thanked Ms. Riter-Rapp, attorney for the SDHSAA, for her assistance in compiling the information, and the staff of the SDHSAA for their informational presentation and willingness to answer all questions from the committee. Senator Tieszen was an official for high school sports in South Dakota for about 35 years and appreciates all that the SDHSAA does for South Dakota's kids.

Moving forward, Senator Tieszen said that site selection and the process used in making those selections will be on a future agenda. The transgender issue will be studied more thoroughly by looking at it on the national level and researching federal guidelines. Committee members were asked to contact Chair Tieszen with any other suggestions for future agendas.

The next meeting of the SDHSAA Interim Committee will be Thursday, August 20, in room 412 of the State Capitol, starting at 10:00 AM.

Adjourn

REPRESENTATIVE LANGER MOVED, SECONDED BY REPRESENTATIVE ROZUM, THAT THE SDHSAA INTERIM COMMITTEE BE ADJOURNED. The motion prevailed unanimously on a voice vote.

The SDHSAA Interim Committee adjourned at 2:50 p.m.

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