

North Dakota Ethics Commission Special Meeting

Minutes of December 29, 2023

MS Teams

1. **Call to Order:** The meeting was called to order by Chair Paul Richard at 1:33 p.m. The following members of the Ethics Commission were also present: Vice Chair Dave Anderson, Commissioners Ward Koeser, Ron Goodman, and Cynthia Lindquist, as well as Executive Director Rebecca Binstock, General Counsel Logan Carpenter, and Executive Assistant Alisha Maier.
2. **Discussion of Advisory Opinion Request No. 23-03, dated September 25, 2023:** Executive Director Binstock advised on September 25, 2023, the Ethics Commission received a request for an advisory opinion from Mona Rindy, then-Chair of the North Dakota Public Employees Retirement System Board of Trustees (NDPERS). The advisory opinion questioned whether legislative members of the NDPERS Board have a disqualifying conflict of interest when the board discusses or takes action related to litigation and the Legislative Assembly is the opposing party in that litigation.

ED Binstock gave the following background: Senate Bill 2015 was passed during the 2023 legislative assembly, which added two legislative members to the NDPERS Board, bringing the total to four. On May 9, 2023, the NDPERS Board approved a motion to bring a lawsuit against the Legislative Assembly challenging the constitutionality of Senate Bill 2015. The NDPERS Board alleged that legislators who serve on the board violate the North Dakota Constitution. One of the allegations of the NDPERS Board, was that Senate Bill 2015 violated the single subject provision of article of the North Dakota Constitution. On September 28, 2023, the North Dakota Supreme Court issued an opinion declaring Senate Bill 2015 void. As a result, special session happened in October of 2023 where House Bill 1547 passed and reinstated an 11-member board model and included the four initial legislators.

ED Binstock advised that Ms. Rindy is no longer serving as Chair for the NDPERS Board, and Michelle Kommer took that seat in late October or November of 2023. ED Binstock notified Chair Kommer of the request for an advisory opinion. ED Binstock further advised she did not ask Chair Kommer whether she wished to withdraw the request for an advisory opinion.

General Counsel Carpenter advised N.D.C.C. § 54-66-04.2(2) states within 14 days after receiving a request for a written advisory opinion, the Ethics Commission shall notify the request or whether the Commission will provide an opinion. That occurred in this case to Ms. Rindy, who was still the Chair at that time.

Motion: Commissioner Goodman made a motion to not issue an advisory opinion until a confirmation from the current chair of the NDPERS Board affirms the request for an advisory opinion. The motion was seconded by Commissioner Lindquist. Chair Richard called for a roll call vote. The motion failed by a roll call vote.

GC Carpenter presented the steps followed during the review of the conflict-of-interest rules and how they were communicated in the draft advisory opinion leading up to the conclusion.

Chair Richard addressed concern on the conflict-of-interest analysis being linked to a significant financial interest in one of the parties or in the outcome of that preceding. Chair Richard further addressed concern in the draft advisory opinion conclusion that states that there is a disqualifying conflict of interest that they must recuse themselves, instead of only that it is a potential conflict of interest and must be disclosed. Chair Richard requested the Commission again review the draft advisory opinion, and look at the Ethics Commissions rules to determine the commissioner's comfort interpreting the term significant financial interest as drafted

ED Binstock advised she and GC Carpenter would work on changing the language, the conclusion, and potentially consider additional statutes or state laws regarding the potential conflict. ED Binstock further advised she would reach out to Michelle Kommer and Mona Rindy to update them on the status and request an extension on the advisory opinion deadline.

The commission set a special meeting date for January 9, 2023, at 9:00 a.m. for further discussion and review of the updated advisory opinion.

3. **Adjourn:** Meeting adjourned at 3:11 p.m.

Approved on  1/17/2024

Rebecca Binstock, Executive Director, North Dakota Ethics Commission