

## Quick Guide for Advisory Opinions

### What is an advisory opinion?

The Ethics Commission may issue written advisory opinions upon request in accordance with NDCC § 54-66-04.2. Written advisory opinions interpret the ethics laws, rules, and Article XIV of the North Dakota Constitution as applied to specified hypothetical facts or prospective conduct. An individual who relies on an advisory opinion issued pursuant to NDCC § 54-66-04.2 may not be subject to civil or criminal penalties provided that the individual acts in good faith and the material facts surrounding the action are substantially the same as the conduct presented in the opinion.

### Who may request an advisory opinion?

Any public official, candidate for elected office, or lobbyist may only request an advisory opinion related to hypothetical facts or prospective conduct of the individual who makes the request. Another individual, board, entity, or organization may make a request on behalf of a public official, candidate for elected office, or lobbyist with corroborating evidence demonstrating the request is authorized and done on behalf of the public official, candidate for elected office, or lobbyist.

### How to request an advisory opinion.

A request for an advisory opinion of the Commission shall be made in writing. The request must state each question upon which an opinion is desired, present all relevant facts, be as specific as possible, identify the names of all parties that are pertinent to the question, and include references to pertinent law or rules known to the requestor. Requestor must supply any additional information requested by the Commission in order to issue the opinion. Requests are to be submitted to the Commission by mail or email at [ethicscommission@nd.gov](mailto:ethicscommission@nd.gov) using the form available on the Ethics Commission website. Please see the "Contact Us" page for current contact information at (<https://www.ethicscommission.nd.gov/contact-information>).

### How is the request processed?

Upon receipt of a request for an advisory opinion, the Commission will decide: (1) whether to close the record of the names of the persons in the request and opinion and (2) whether to issue an advisory opinion. The Commission has delegated its authority to address these two issues to the Executive Director, in consultation with the Chairperson. Within fourteen days of a written request for an advisory opinion, the requestor will be notified whether an opinion will be

provided. A requestor may appeal a decision by the Executive Director to not issue an opinion to the full Ethics Commission.

Within ninety days of notifying a requestor that the Commission will issue an advisory opinion, the Commission will issue a written advisory opinion. The Commission's written opinion will be provided to the requestor and made available to the public. Opinions and requests for opinions issued under NDCC § 54-66-04.2 are open records, except names of persons in the opinions and requests are exempt records. The phrase "exempt record" means the record is neither required by law to be open to the public, nor is confidential, but may be open in the discretion of the Commission. If the Commission exercises its discretion to not disclose all or part of an exempt record, the record is considered a closed record. Whether the Commission closes the record of the names of persons in the opinions and requests will be determined by the Commission on a case-by-case basis, with consideration given to the nature of the request and opinion.

Written advisory opinions are the final opinion of the Commission unless new and material facts are submitted which, in the opinion of staff and upon a majority vote of the Commission, warrant reconsideration.

### **Advisory opinions published.**

The Commission will post all written advisory opinions at <https://www.ethicscommission.nd.gov>. An individual may rely on a published opinion provided they act in good faith and the facts are substantially the same as the conduct presented in the advisory opinion. Civil or criminal penalties may not be imposed upon an individual for an action taken in accordance with the written advisory opinion issued pursuant to § 54-66-04.2 if the individual acts in good faith and the facts are substantially the same as the conduct presented in the opinion.

### **Questions?**

Contact the Ethics Commission at (701) 328-5325 or [ethicscommssion@nd.gov](mailto:ethicscommssion@nd.gov).

Updated:

10/19/2022

12/08/2022

06/13/2023

04/08/2024