

North Dakota Ethics Commission Regular Meeting

Minutes of April 26, 2023

MS Teams

1. **Call to Order:** The meeting was called to order by Chairman Paul Richard at 9:00 a.m. The following members of the Ethics Commission were also present: Vice Chair David Anderson, Commissioners Ron Goodman, Ward Koeser, and Cynthia Lindquist, as well as Legal Counsel Allyson Hicks, Special Assistant Attorney General Pat Monson, Executive Director Rebecca Binstock, and Office Manager Holly Gaugler.
2. **Approval of Agenda:** No additions were made.
3. **Approval of Minutes:** The Commission discussed meeting minutes from March 15 and March 28, 2023, with no changes made.

Motion: Commissioner Koeser moved to approve meeting minutes from March 15 and March 28, 2023, with no changes. Motion was seconded by Vice Chair Anderson. Chair Richard called for a voice vote. The motion was approved by unanimous voice vote.

4. **Budget Update:** Office Manager Holly Gaugler provided a budget update as of March 31, 2023, showing total expenses for March 2023 at \$22,617 and total expenditures for the biennium of \$515,133 - leaving a balance for the remainder of the biennium at \$108,851. Gaugler briefed the Commission on projected expenditures for the remainder of the biennium of \$115,200 which leaves a remaining balance on June 30, 2023, of \$4,571 with the anticipation of deficiency funding and an emergency clause added to the budget bill SB 2024 for SAAG costs. She noted that the ending balance is very difficult to project at this time until the emergency clause is added to SB 2024 for SAAG costs of \$72,000 and remodel and moving costs of \$25,000. She also noted that included in the next three month's projections include \$20,000 for investigation costs, which at this time there is no pending requirement. Also, the Commission has continued to meet virtually, saving travel dollars totaling \$10,500. With savings in those accounts and an emergency clause for the deficiency appropriations there will be adequate funding to purchase conference room equipment and proceed with moving and renovation costs. The Commission will be provided updates as we get closer to the end of the biennium.

Executive Director Binstock added that the deficiency appropriation of \$97,000 was removed from SB 2025 by the House and then added to SB 2024 but did not pass with an emergency clause. At the last Commission meeting the Commission had conditionally approved the expenditure of \$28,921 for office remodeling and \$6,910 for conference room equipment upon the passage of SB 2025. Since the funding for the remodel was removed from SB 2025 to SB 2024, it is appropriate to clarify the Commission approves the expenditure upon passage of SB 2024 that may or may not include an emergency clause.

Motion: Commissioner Lindquist moved to approve expenditures of \$28,921 for office renovation and \$6,910 for conference room equipment upon

passage of an emergency clause in Senate Bill 2024 or the effective date of Senate Bill 2024. Motion was seconded by Commissioner Goodman. Chair Richard called for a voice vote. The motion was approved by unanimous voice vote.

5. **Executive Director Update:**

- Executive Director Binstock discussed the education and outreach calendar, noting that she presented on March 23, 2023 to the Big Muddy Bar Association. Legal Counsel Allyson Hicks was also in attendance and assisted in answering the many questions from the group.

She had also spoke with the Bismarck chapter of the Lions Club International on April 23, 2023.

Future presentations include the ND Board of Medicine on Friday, April 28, 2023, a continuing education on Quasi-judicial rules at the State Bar Association annual meeting in June 2023, and presentations to the Chamber of Commerce for Fargo- West Fargo-Moorhead. She also has near future plans to present at various locations throughout the state.

- Executive Director Binstock provided an update on the following legislative bills:

SB 2048: A hearing on SB 2048 was held before House Government and Veteran Affairs (GVA) on March 9, 2023. ED Binstock and GC Hicks testified in support of the bill. Committee work on SB 2048 was done late in the day on March 9, 2023. There was a motion for a do not pass recommendation made. No discussion followed. The motion passed by a 6-4-3 vote and was set for a floor vote on March 13, 2023. After discussions with the committee members, the bill was removed from the calendar at the start of the floor session on March 13 and went back to committee for further consideration.

On March 16 and 17, 2023, GVA conducted committee work on SB 2048. As part of that committee work, the Ethics Commission presented an amendment to remove previous language which included "Directors, officers, commissioners, heads, or other executives of state agencies" in the definition of "public official." The amendment was adopted, and SB 2048 was given a Do Pass recommendation (7-6-0). SB 2048 passed the House floor on March 23, 2023.

The bill did go to conference committee to clarify the scope of individuals who can file a complaint with the Ethics Commission. The conference committee met on April 11, 2023. A minor change in language was presented and the conference committee adopted the language change. SB 2048 passed both the Senate and House on April 12 and April 13, respectively.

HB 1485: SB 1485 moved over to the Senate and a hearing was held on March 23, 2023. Executive Director Binstock submitted written testimony and answered questions

from the Senate State and Local Committee. The bill was given a Do Pass recommendation without changes and passed on the Senate Floor on March 30, 2023.

Executive Director Binstock and the Commission discussed the need to review current rules for needed changes due to the bills passed during legislative session. Chair Richard suggested rule changes be addressed in May and June. Executive Director Binstock added that money was reserved in the budget for rules changes.

SB 2024: SB 2024 went from the Senate to the House. SB 2024 was assigned to the Government Operations Division. The Government Operations Division held a hearing on SB 2024 and conducted committee work with Executive Director Binstock and Office Manager Holly Gaugler presenting testimony. The Government Operations Division changed only one line item from the Senate version of SB 2024: there was a reduction from \$100,000 in temporary salaries for an educational coordinator to \$30,000 for the biennium. However, there was one more notable change: The House also removed the Ethics Commission's request of \$97,000 from OMB's deficiency budget and moved that amount into the Ethics Commission's budget bill as a one-time funding amount with an emergency clause to access those funds as soon as the bill passes. This transition was done at the request of Legislative Council.

When the Representative Mock presented the bill to the full House Appropriations, there was a motion to remove the temporary salaries and add an FTE for an attorney who would have a dual role of educating and investigating (reducing the need for additional professional fee costs associated with hiring SAAGs). The motion failed.

SB 2024 passed on the House floor, but the bill did not receive 2/3 majority for the emergency clause to pass.

The Senate did not concur with the House's version of SB 2024 and the bill went to conference committee. The conference committee re-worked SB 2024 with changes made by the Conference Committee as follows:

- Added 1 FTE: Attorney with education coordination responsibilities
- Removed \$216,000 of professional fees to hire SAAGs.
- Changed temporary salaries allocation to \$50,000 to accommodate the administrative assistant transition and intern pay.
- Added a \$50,000 investigation/professional fee contingency fund.
- The emergency clause for the \$97,000 one-time funding was added back.
- Added a study to evaluate the feasibility and desirability of establishing a rate structure to offset the operating expenses of the Ethics Commission.
- Added a report to legislative management on the effectiveness of the Ethics Commission's educational outreach.

SB 2024, as amended by the Conference Committee passed both the House and Senate this week. However, the bill did not receive 2/3 majority in the House for the emergency clause to pass.

Executive Director Binstock will work with both the House and Senate Appropriations Committees, as well as OMB, to add this emergency clause into the OMB budget bill (SB 2015).

- Executive Director Binstock briefed the Commission on proposed changes to the Commission's policies and procedures which addressed added policies for rental cars, yearly policies review, risk management reporting, and a distracted driving policy. Executive Director Binstock explained that by adopting these policies, the Commission may qualify for risk management policy discounts up to 15%.

Motion: Commissioner Koeser made a motion to adopt policies for rental cars, yearly policies review, risk management reporting, and a distracted driving policy. Motion was seconded by Vice Chair Anderson. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

- Executive Director Binstock discussed the proposed online form submission project. The project totaling \$8,263 had been conditionally approved at the last regular meeting (March 15, 2023) contingent upon deficiency funding of \$97,000 in SB 2025. Now that the deficiency funding of \$97,000 had been removed from SB 2025 and added to SB 2024, approval by the Commission would be appropriate for this expenditure of \$8,263 contingent upon the passage of SB 2024 and an emergency clause included in OMB's SB 2015.

Motion: Commissioner Goodman moved to conditionally approve the expenditure of \$8,263 for the online form submission project contingent upon the passage of deficiency funding of \$97,000 in SB 2024 with an emergency clause included in OMB's bill SB 2015. Motion was seconded by Commissioner Lindquist. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

- Executive Director Binstock briefed the Commission on a listing of current activity statistics that had been provided to the legislature. The listing showed the significant level of increased activities with not just complaints but also other activities since the passage of Commission rules and the issuance of advisory opinions.

6. **Post-Legislative Session Survey:** Executive Director Binstock recommended that the Commission develop and employ a survey – both qualitative and quantitative – to evaluate legislators, lobbyists, and public citizen's impressions of the application of Ethics Commission rules during legislative session. Executive Director Binstock envisions eliciting responses through an online survey sent to stakeholders. Additionally, she is hoping to schedule meetings with individuals/associations to candidly discuss private and public social and educational events. Executive Director Binstock expects either no cost or a nominal cost associated with this survey.

Motion: Commissioner Goodman moved to authorize the Ethics Commission staff to elicit feedback from stakeholders regarding the application of Ethics Commission rules during legislative session and to provide the Commission with feedback from the survey. Motion was seconded by Commissioner Koeser. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

7. **Review of Annual Records Disposal Procedure:** Executive Director Binstock and Office Manager Holly Gaugler briefed the Commission on the requirements of an annual records disposal process managed through NDIT. The Commission has 77 records with three of them being unique to the Commission, the remaining 74 are general records that all agencies/commissions must review and dispose of if applicable. This annual process needs to be completed by June 30th. Chair Richard asked that each Commissioner individually set up a meeting with Holly for more specific direction and a review of their applicable records.

8. **Meetings for June 2023 through December 2023:** The Commission set dates for regular meetings from June 2023 through December 2023 as follows:

- June 13th 2023 - MS Teams
- July 18th 2023 – State Capitol and MS Teams
- August 23rd 2023 – MS Teams
- September 27th 2023 – State Capitol and MS Teams
- October 25th 2023 – MS Teams
- November 14th 2023 – MS Teams
- December 13th 2023 – MS Teams

9. **Executive Session #1:** The Commission entered the first executive session during the general meeting at 11:23 a.m. to discuss Complaint Nos. 22-003, 22-004, 22-005, 22-006, 22-007, 22-008, 22-009 and 22-010 under the authority of N.D.C.C. Sections 54-66-12(1), 54-66-12(3), and 44-04-19.2(1) – information regarding the content and parties to a complaint to the Ethics Commission is confidential. The following participants entered the executive session: Chair Paul Richard, Vice Chair Dave Anderson, Commissioner Ron Goodman, Commissioner Cynthia Lindquist, Commissioner Ward Koeser, Special Assistant Attorney General Pat Monson, Executive Director Rebecca Binstock, and Office Manager Holly Gaugler. Executive Session ended at 12:33 p.m. and all participants returned to the regular meeting. During the Executive Session, the Commission discussed Complaint Nos. 22-003 through 22-010. After Executive Session discussion, following motion was made:

Motion: Commissioner Goodman moved to authorize Special Assistant Attorney General Pat Monson and Executive Director Rebecca Binstock to proceed with investigation of Complaint Nos. 22-003, 22-004, 22-005, 22-006, 22-007, 22-008, 22-009 and 22-010 as discussed in Executive Session. Motion was seconded by

Commissioner Lindquist. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

10. **Executive Session #2:** The Commission entered the second executive session during the general meeting at 12:36 a.m. to discuss Complaint No. 23-002 under the authority of N.D.C.C. Sections 54-66-12(1), 54-66-12(3), and 44-04-19.2(1) – information regarding the content and parties to a complaint to the Ethics Commission is confidential. The following participants entered the executive session: Chair Paul Richard, Vice Chair Dave Anderson, Commissioner Ron Goodman, Commissioner Cynthia Lindquist, Commissioner Ward Koeser, General Counsel Allyson Hicks, Executive Director Rebecca Binstock, and Office Manager Holly Gaugler. Executive Session ended at 1:08 p.m. and all participants returned to the regular meeting. During Executive Session, the Commission discussed Complaint No. 23-002. After Executive Session discussion, the following motion was made:

Motion: Commissioner Goodman moved to summarily dismiss Complaint No. 23-002 due to lack of subject matter jurisdiction as discussed in Executive Session. Motion was seconded by Commissioner Lindquist. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

11. **Adjourn:** Commission, having no further business, was adjourned at 1:11 p.m. The next regular meeting is scheduled for May 24, 2023, at 9:00 a.m.

Approved on 5/31/2023 

Rebecca Binstock, Executive Director, North Dakota Ethics Commission