

# North Dakota Ethics Commission

Minutes of November 14, 2019 Regular Meeting

Brynhild-Haugland Room, State Capital

600 E. Boulevard Avenue, Bismarck, ND 58505

The meeting was called to order by Chair, Judge Ronald Goodman, at 9:02 a.m. The following members of the Ethics Commission were present: Ronald Goodman, Dr. Cynthia Lindquist, David Anderson, Ward Koeser and Paul Richard. Also present was the Ethics Commission legal counsel, Allyson M. Hicks, Assistant Attorney General for the State of North Dakota.

1. The Commission reviewed the agenda. No changes or amendments were proposed to the published agenda.
2. The Commission reviewed the minutes from the October 23, 2019 regular meeting.

**Motion:** Koeser moved for approval of the minutes from the October 23, 2019, regular meeting. Anderson seconded the motion. Chair Goodman called for a voice vote on the motion. Motion approved unanimously by voice vote.

3. Chair Goodman led a discussion regarding the scheduled December meeting which is currently scheduled for December 11 and 12, 2019. Discussion was held regarding modifying the schedule to a one day meeting on December 11, 2019, starting at 9:00 a.m. ending upon the completion of the agenda, and cancelling the meeting set for December 12, 2019.

**Motion:** Koeser moved that the December regular meeting be limited to a one day meeting on December 11, 2019, starting at 9:00 a.m. ending upon completion of the meeting agenda. Further, that the currently scheduled meeting date of December 12, 2019, starting at 9:00 a.m., be cancelled. Lindquist seconded the motion. Chair Goodman called for discussion on the motion. Chair Goodman called for a roll call vote on the motion. The votes were as follows: Lindquist, Richard, Anderson, Goodman and Koeser voted in favor of the motion. Motion approved.

4. Chair Goodman called for a discussion of the Ethics Commission budget and estimated expenses incurred or to be incurred through the remainder of the current North Dakota biennium. Anderson provided a handout that he prepared with budget estimates. (See attached Anderson Budget Estimate Handout). After discussion it was the general consensus that the budget projections are within the overall funding

approved by the North Dakota Legislature for the current biennium. Chair Goodman asked Koeser to keep a running tally on expenses incurred until such time as we have an Executive Director who will have budget responsibility.

In addition, the Commission discussed expense reimbursement for travel to the meetings by Chair Goodman. As previously disclosed, Chair Goodman will be out-of-state for some of the upcoming meetings. As a result, Chair Goodman will need to fly to Bismarck for the meeting rather than drive from his home. It was confirmed by Jeff Larshus, Office of Management and Budget, that OMB policy provides for the reimbursement of air fare when a Commissioner must fly from an out-of-state location rather than drive from an in-state location.

The Commissioners discussed the issue of when a Commissioner is to be paid the daily compensation approved by the North Dakota Legislature. Discussion centered on the issue of whether the daily compensation is to be paid for Commissioners attending non-Ethics Commission meetings, i.e. Legislative meetings or hearings. It appears the issue is really up to the Ethics Commission to decide. In general, the Commissioners want to approach the issue in a manner similar to other boards, commissions and agencies who are authorized under State law to receive the daily compensation. Allyson Hicks will research how other State boards, commissions and agencies approach the issue and will bring the information back to the December meeting for further discussion. In the interim, Commissioners are asked to let Jeff Larshus, OMB, know what meetings the Commissioner attends.

5. Chair Goodman introduced Sarah Leno, Human Resources, to provide an update on the executive director search. Ms. Leno reported that there were 11 total applicants. Two did not meet the minimum qualifications which leaves 9 applicants for the Commission to evaluate. Ms. Leno outlined the process for the evaluation of the 9 applicants. Ms. Leno will provide each Commissioner with a spreadsheet with the applicants' responses to the screening questions. Identifying information will not be included on the spreadsheet. The Commissioners concluded that the information would be reviewed and discussed at a special meeting on November 22, 2019, at 10:00 a.m. Goodman, Koeser, Richard and Lindquist will attend the meeting by telephone. Anderson and Hicks will be present in the meeting room in the State Capital. Room to be determined. Hicks will provide required notice of the meeting.

**Motion:** Richard moved that a special meeting be held on November 22, 2019, at 10:00 a.m. to be held by telephone with Anderson and Hicks physically present in the meeting room in the State Capital. Goodman, Koeser, Lindquist and Richard will attend by telephone. The purpose of the meeting is to review the 9 applicants responses to the screening questions and select applicants to advance further in the hiring process. Koeser seconded the motion. Chair

Goodman called for further discussion. There being no further discussion, Chair Goodman called for a roll call vote on the motion. Result of the vote was as follows: Lindquist, Richard, Anderson, Goodman and Koeser voted in favor of the motion. Motion approved.

6. Chair Goodman introduced Sharon Freeman, North Dakota Information Technology Record Retention, for a presentation on record retention requirements and policies that are applicable to the Ethics Commission records. Ms. Freeman provided a handout with a general overview of the record retention requirements (See Freeman Records Management Handout). Ms. Freeman will work with the executive director on establishing necessary record retention policies and practices.
7. Chair Goodman asked Koeser to provide an update on the leasing of office space for the Ethics Commission. Koeser introduced John Boyle, Director of Facilities Management. Mr. Boyle handed out a copy of a proposed lease that he negotiated with the Landlord, JV, LLC, for the office space located at 101 Slate Drive, Suite #4 (See attached proposed Lease). Mr. Boyle stated that the proposed lease is consistent with State requirements and consistent with the terms approved by the Ethics Commission at the October 14, 2019, regular meeting. The Commissioners discussed the lease and the proposed office space.

**Motion:** Koeser moved that the lease be approved as presented. Anderson seconded the motion. Chair Goodman called for further discussion on the motion. There being no further discussion, Chair Goodman called for a roll call vote on the motion. The votes were as follows: Lindquist, Richard, Anderson, Goodman and Koeser voted in favor of the motion. Motion approved.

Chair Goodman recessed the meeting at 10:16 a.m., and the meeting reconvened at 10:30 a.m

8. Chair Goodman asked Lindquist to provide an update on the Ethics Commission website. Lindquist introduced Cliff Heyne, Information Technology Department, who provided an overview of the Commission website. Discussion was held on options for the site, content, and other website functions. The Commissioners were of the consensus that Lindquist and Hicks should be the individuals at this time who would approve edits and additions to the website. The Commissioners discussed the complaint procedures that would be available on the website. The Commissioners discussed that the complaint procedure should accommodate both written complaints in accord with NDCC Chapter 54-66, and the reporting of relevant information on a confidential whistleblower hotline as outlined in Article XIV of the North Dakota Constitution. The Commissioners felt that until there is office staff,

written complaints should be e-mailed to Chair Goodman. Confidential hotline information would be accessed by Chair Goodman or Vice-Chair Lindquist.

**Motion:** Richard moved that the North Dakota Information Technology staff proceed to establish a complaint process on the Ethics Commission website for written complaints in accord with NDCC 54-66, and a confidential whistleblower hotline for the reporting of relevant information pursuant to Article XIV, North Dakota Constitution. Further, necessary funds be expended for the establishment of both the written complaint and confidential whistleblower hotline. Koeser seconded the motion. Chair Goodman called for further discussion. There being no further discussion, Chair Goodman called for a roll call vote on the motion. The votes were as follows: Lindquist, Richard, Anderson, Goodman and Koeser voted in favor of the motion. Motion approved.

9. Chair Goodman called for a discussion of the rule making process and timelines. Chair Goodman handed out a draft of a Code of Ethics he has worked on based on a code of ethics used by the Missouri Ethics Commission. (See Code of Ethics Handout). Discussion was held regarding the use of other North Dakota agency or commission codes of ethics as a starting point for further discussion. Goodman requested that Hicks research other North Dakota agency or entity codes of ethics and distribute to the Commissioners. The Commissioners are requested to review the examples and be prepared to discuss at a future meeting. Discussion was also held regarding other rules that will need to be considered by the Ethics Commission. Chair Goodman has recently reviewed the administrative rules adopted by the State of Hawaii and has discussed the rules with the Executive Director of the Hawaii Ethics Commission. Hawaii has recently revised all of their rules and gave Chair Goodman authorization to utilize the new Hawaii rules as the Ethics Commission sees fit. Chair Goodman will provide the Commissioners with the information he has obtained from Hawaii. Commissioners are asked to review and be prepared to discuss comments at a future meeting. Hicks will provide the Commissioners with a timeline on when rules would need to be adopted by the Commission under State law.

Chair Goodman recessed the meeting at 11:36 a.m. The meeting reconvened at 12:45 p.m.

10. Chair Goodman called for a discussion regarding the procedure to handle complaints or confidential information received in the interim until complaint procedures on the website and hotline are established, and the Executive Director is on duty. Written complaints under NDCC 54-66-06 must be made available to the subject of the complaint within 20 days of the date the Ethics Commission receives the complaint. It was felt that it would be best if Hicks provided the required notice under NDCC Chapter 54-66 on behalf of the Commission.

**Motion:** Richard moved that required notices under NDCC Chapter 54-66 be provided by Hicks on behalf of the Ethics Commission until the Executive Director is on duty. Koeser seconded the motion. Chair Goodman called for discussion on the motion. There being no further discussion, Chair Goodman called for a roll call vote on the motion. The votes were as follows: Lindquist, Richard, Anderson, Goodman and Koeser voted in favor of the motion. Motion approved.

Discussion was also held on the procedure to handle confidential information received by the Commission as permitted by Article XIV, North Dakota Constitution. The Commissioners were of the consensus that confidential information received by the Ethics Commission as permitted under Article XIV, North Dakota Constitution, be brought to the next regular meeting or a special meeting called by the Chair for an executive session discussion of the confidential information.

**Motion:** Richard moved that confidential information received by the Ethics Commission as permitted by Article XIV, North Dakota Constitution, be brought to the next regular meeting or a special meeting called by Chair Goodman for discussion and consideration by the Ethics Commission in an executive session. Lindquist seconded the motion. Chair Goodman called for discussion of the motion. There being no further discussion, Chair Goodman called for a roll call vote on the motion. The votes were as follows: Lindquist, Richard, Anderson, Goodman and Koeser voted in favor of the motion. Motion approved.

### **Executive Session:**

11. Chair Goodman called for the Ethics Commission to go into Executive Session at 1:08 p.m. to review a complaint which must be discussed in executive session. The authority for the executive session is N.D. Constitution XIV, Section 3 (2); NDCC Section 54-66-04(2); and, NDCC Section 44-04-19.2(1). Chair Goodman read the statement calling the Executive Session in accord with North Dakota Law which was recorded. All individuals in attendance left the meeting room with the exception of Ms. Hicks, Koeser, Goodman, Lindquist, Anderson and Richard who were all present for the executive session. The executive session was recorded. At 1:23 p.m. the executive session was ended and the meeting room opened to other attendees.

**Motion:** Richard moved that the Ethics Commission disregard the complaint on the basis that it is not within the subject matter jurisdiction of the Ethics Commission under North Dakota Constitution Article XIV and NDCC Section 54-66-07. Chair Goodman called for a roll call vote on the motion. The votes were as follows: Koeser, Goodman, Lindquist, Anderson, and Richard voted in favor of the motion. Motion approved.

11. Chair Goodman called for a discussion of a request received by Richard seeking an advisory opinion regarding the Ethics Commissions jurisdiction. Hicks advised the Commission that there is no authority under the Constitution or North Dakota Century Code for the Ethics Commission to issue advisory opinions. Individuals may file a complaint with the Commission, and the Commission will consider the issue of jurisdiction when it deliberates on complaints. Hicks will respond to the request Richard received for an advisory opinion that the Ethics Commission does not issue advisory opinions.
12. All items on the agenda being completed, Chair Goodman asked for a motion to adjourn.

**Motion:** Anderson moved that the meeting adjourn. Koeser seconded the motion. Goodman called for a voice vote on the motion. Motion approved unanimously.

Meeting adjourned at 1:41p.m

Approved on December 11, 2019

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Ronald Goodman, Chair, North Dakota Ethics Commission