

North Dakota Ethics Commission Meeting

Minutes of January 26, 2022

Live Stream MS Teams

1. Call to Order: The meeting was called to order by Chair Ron Goodman, at 9:06 a.m. The following members of the Ethics Commission were present: Cynthia Lindquist, Paul Richard, Ward Koeser and David Anderson. Also present were Ethics Commission legal counsel Allyson M. Hicks, Executive Director Dave Thiele, and Office Manager Holly Gaugler.
2. Approval of Agenda: The agenda was discussed for this meeting with no additions.
3. Approval of Minutes: The minutes of the 15 December 2021 meeting were discussed with no changes.

Motion: Commissioner Anderson moved to approve the minutes of December 15, 2021 with no corrections. Motion was seconded by Commissioner Lindquist. Chair Goodman called for a voice vote on the motion. The motion was approved by unanimous voice vote.

4. Budget Update: Office Manager Holly Gaugler provided a budget update as of December 31, 2021. Gaugler reported December 2021 expenditures of \$25,430 and total expenditures for the biennium of \$133,287 leaving a remaining biennial budget of \$490,697. Gaugler also reported projected expenditures for the remainder of the biennium (January 1, 2022 through June 30, 2023) at an estimated \$467,580 which would leave an approximate ending balance of \$23,117 on June 30, 2023. Gaugler advised the Commission that the ending balance would likely rise as the Commission continues to have MS Teams virtual meetings rather than in-person meetings.
5. Executive Director Thiele Update:
 - Continuing to review options for providing videos of meetings. He discussed some options of providing meeting video but is still awaiting additional guidance on viable options. Current technology did not provide a good option for posting a transcript. A final recommendation will be made at the February 23rd meeting.
 - Thiele briefed the Commission on a recent complaint (#2021-009) which was a complaint against the judiciary. Thiele reported that he had summarily dismissed the complaint as it was outside the jurisdiction of the Commission as it was a judicial complaint as well as the occurrence being outside the three-year limitation. Thiele reported that an appeal had not been received as of this date but would keep the

Commission updated. The complaint will not be closed until the appeal date limitation has passed.

- The code of ethics annual review has been completed by all Commissioners. Thiele recommended that the Commission discuss term limits for the chair and vice chair positions at the February meeting.
- Thiele reported that the Commission received a letter from the North Dakota Citizens for Public Integrity (NDPI) in response to the most recent draft of the Commission's Conflict of Interest rule and has been received and reviewed by all Commissioners. He also noted that any questions would be addressed as agenda items at the February meeting and would continue to be reviewed as conflict of interest rules are addressed.
- Thiele discussed the current audit of the ND Ethics Commission being conducted by the ND State Auditor's Office. He reported that the auditors would be holding an exit conference on January 27th but did not anticipate any formal audit findings.
- Thiele reminded the Commission on the upcoming Campaign Legal Center virtual presentation on "How To Make Ethics Commissions More Transparent Accessible and Accountable" on January 27th at 12:00 pm.
- Thiele discussed a letter from Mr. Skokos with the Dakota Resource Council, received December 20, 2021 regarding the December 15, 2021 meeting of the Clean Sustainable Energy Authority (CSEA). The letter was not a formal complaint but did state that Mr. Skokos believed decisions on grant awards by CSEA did present a conflict for those members providing grants. The Commission discussed the challenges of establishing conflict of interest rules for the private sector and will welcome public input as the Commission proceeds with the rule. Thiele also encouraged written public comment before the February 23rd meeting and allowing public comment during the meeting. Information will be posted to the website for written submittal of comments and also to arrange a time to present during the February meeting.

6. One-Page Strategy Review: The Commission discussed the one-page strategy review document that was submitted to Office of Management and Budget (OMB) on January 10th as the first step document in the review of the Commission's strategic plan with the Governor scheduled for March 1, 2022. Vice Chair Lindquist asked that minor language changes be made. The Commission agreed and Executive Director Thiele said changes would be made and a revised document would be submitted to OMB.

7. Conflict of Interest Rule Discussion: The Commission, led by Commissioner Richard, reviewed and discussed the current conflict of interest rule draft. He provided a background on the changes that were made to the draft since the December 15, 2021 meeting. Extensive research has been done based on public feedback, other states' laws and rules, the National Council of State Legislators research, the ND Constitution, the Century Code, the ND Judicial


Code of Ethics, ND Nonprofit laws and rules, the Caperton Supreme Court case, and private organizations procedures on conflicts. The major common theme for all has been disclosure. The Commission has revised the draft conflict rules to split out quasi-judicial conflicts from the general conflict of interest rules. After a detailed review during the meeting, the Commission agreed to the following changes to the current draft rules to be discussed with public commentary on February 23, 2022:

- a. 115-04-01-01(1) – Under the definition of “Disqualifying Conflict of Interest”, add language that allows the first determination of disqualifying conflict of interest be made by the public official.
- b. 115-04-01-01(5)(e) – Add language that allows an agency, legislative body, board, commission or committee the flexibility by rule or policy to designate a Neutral Decisionmaker.
- c. 115-04-01-04(2)(c) – Remove “within the current or immediately preceding election cycle. No campaign contributions of any kind received prior to January 5, 2022, shall be included in this definition.” The language “within the current or immediately preceding election cycle” will be added to the Neutral Decisionmaker’s analysis under 115-04-01-04(5)(c).

The Commission also discussed whether campaign contributions should be included in 115-04-01-01(2) in the definition of potential conflicts of interest in the “general” section of the conflicts rule or if campaign contributions should be defined separately under 115-04-01-01. No decision was made and the Commission agreed to table this issue and further discuss as public input is received.

The Commission also discussed the option of including a bright-line campaign donation limit within the rules pertaining to quasi-judicial proceedings. Commissioner Richard also brought up a possibility of a preamble to the rule that would help in understanding the complexity and separation of “general” conflicts of interest and “quasi-judicial” conflicts of interest.

8. Further Business: Upon request by Chair Goodman, the Commission agreed to change the scheduled April 27, 2022 meeting to April 20, 2022.
9. Adjourn: Commission, having no further business, was adjourned at 11:54 a.m. The next meeting is scheduled for February 23, 2022, at 9:00 a.m. by MS Teams.

Approved on 2/22/22 
Dave Thiele, Executive Director, North Dakota Ethics Commission