

# North Dakota Ethics Commission Special Meeting

Minutes of January 31, 2023

MS Teams

1. **Call to Order:** The meeting was called to order by Chairman Paul Richard at 1:30 p.m. The following members of the Ethics Commission were also present: Vice Chair David Anderson, Commissioners Ron Goodman, Ward Koeser, and Cynthia Lindquist, Legal Counsel Allyson Hicks, Executive Director Rebecca Binstock, and Office Manager Holly Gaugler.
2. **Agenda and Instructions for Special Meeting:** Chair Richard reminded the Commission that discussion for the meeting is limited to the agenda items which includes two items: 1. Legislative bills: SB 2024, SB 2025, SB 2048, HB 1485, HB 1500, HB 1198, HB 1344, HB 1395, HB 1441, SB 2226, and SB 2280 and, 2. Advisory Opinion 23-01. No other matters may be discussed.
3. **Review of Legislative Bills: SB 2024, SB 2025, SB 2048, HB 1485, HB 1500, HB 1198, HB 1344, HB 1395, HB 1441, SB 2226, and SB 2280:** Executive Director Binstock provided an overview of legislative bills:
  - **SB 2024** is the Commission's budget bill. The initial hearing for this bill was held on January 5, 2023, in front of the Senate Appropriations Committee where Executive Director Binstock presented testimony. It was also attended by Chair Paul Richard, Vice Chair Dave Anderson and Holly Gaugler. At that time, it was assigned to the Human Resources Division of the Senate Appropriations Committee. A second hearing was held by the Human Resources Division on January 20, 2023, where Executive Director Binstock provided testimony. It was also attended by Chair Paul Richard, Vice Chair Dave Anderson, Commissioner Ward Koeser (via Teams), and Holly Gaugler. On January 23, 2023, the Human Resources Division performed committee work and Executive Director Binstock answered questions. One committee member questioned the education and training FTE and also suggested a cut in the travel budget request of \$13,448 by 50% but it was not acted upon during this committee work.
  - **SB 2025** is OMB's deficiency bill that includes several agencies along with the Commission's deficiency of \$97,000. The bill includes an emergency clause which allows the Commission access to the funds as soon as the bill has been signed. The \$97,000 includes \$25,000 for moving and renovation costs at the capitol and \$72,000 for SAAG costs. The first and only hearing on this bill was January 13, 2023. It was attended by Executive Director Binstock, Vice Chair Dave Anderson, and Holly Gaugler. The

Committee did not ask any questions regarding the Ethics Commission's request. Binstock asked that the Commission approve an amendment to the Commission's budget bill SB 2024 that would allow the \$97,000 contained in SB 2025 to be carried over to the 2023-25 biennium as the costs for the move and renovation will likely be incurred after July 1, 2025 as well as current SAAG costs.

**Motion:** Commissioner Goodman moved to have the Commission approve a carry-over amendment to SB 2024 for the \$97,000 deficiency appropriation in SB 2025. Motion was seconded by Commissioner Lindquist. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

- **SB 2048** is a bill that amends N.D.C.C. Chapter 54-66 and includes three sections. These amendments equitably expand the classes of individuals who can file a complaint, promote consistent application of the Ethics Commission's jurisdiction, and revise the process of notifying an individual accused of an alleged ethics violation. A hearing was held on January 6, 2023, where Executive Director Binstock presented testimony before the Senate State and Local Government Committee. The hearing was also attended by Chair Paul Richard, Vice Chair Dave Anderson, Commissioner Cindy Lindquist, and Holly Gaugler. The Committee did work on the bill, January 13, 19, and 20. The bill was amended twice, with the second amendment moving out of committee on January 27. On January 30, 2023, the amendment passed on the Senate floor. As originally requested, the bill sought to add executive branch employees to the definition of "public employee" and permit non-residents who are licensed by a state regulatory board or commission or a party to a quasi-judicial proceeding to file a complaint with the Ethics Commission. It appears the amended version expands the definition of "public employee" to include "Directors, officers, commissioners, heads, or other executives of state agencies," but not all executive branch employees. It appears the amended language did not change the original amendment revising the timing of notifying an individual accused of an alleged ethics violation. It also permits non-residents who are licensed by a state regulatory board or commission of a party to a quasi-judicial proceeding to file a complaint.
- **HB 1485** relates to the authority of the ethics commission; and to amend and reenact subsection 5 of section 28-32-08.1 and section 54-66-11 of the North Dakota Century Code, relating to the rulemaking process of the Ethics Commission. HB 1485 has 3 sections. Section 1 amends subsection 5 of N.D.C.C. § 28-32-08.1 to remove language that states the subsection does not apply to the Commission. Executive Director Binstock believes the amendment seeks to require the Commission to complete economic impact statements prior to promulgating rules. Section 2 amends N.D.C.C. § 54-66-11 to state that the Commission is subject to all provisions rather than just select provisions of N.D.C.C. Chapter 28-32, the administrative agencies practice act. This language creates issues for the Commission as the Ethics Commission is not an administrative agency and does not fall under the legislature. Section 3 adds a section

to N.D.C.C. Chapter 54-66 and states that subsection 2 of section 3 of Article XIV of the N.D. Constitution “does not include the authority to adopt rules imposing regulations related to conflicts of interest.” This language attempts to limit the Commission’s rule making authority as provided for in the ND Constitution. Executive Director Binstock, Chair Richard, and Assistant AG Hicks have reviewed the language of HB 1485. Executive Director Binstock advises the Commission to approve testimony opposing the bill. A hearing on HB 1485 is set for February 1, 2023, at 8:00 AM before the House Industry, Business and Labor Committee.

**Motion:** Vice Chair Anderson moved to direct Executive Director Binstock to provide testimony, as drafted, opposing HB 1485. Motion was seconded by Commissioner Koeser. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

- **HB 1500** relates to reporting the ultimate and true source of funds; to amend and reenact sections 16.1-08.1-01 and 16.1-10-04.1 of the North Dakota Century Code, relating to political advertisements and reporting the ultimate and true sources of funds; to repeal section 16.1-08.1-08 of the North Dakota Century Code, relating to identifying the ultimate and true source of funds; and to provide a penalty. The Committee overseeing this bill met on January 30, 2023. This bill opposes organizations that send out information without providing their source or identity. Executive Director Binstock asked that the Commission provide authority and direct her to study and research other laws and cases that may affect the Commission taking a position on this particular bill. Chair Richard asked that she continue to monitor and evaluate and to provide a recommendation to the Commission for their consideration at a future meeting.
- **Additional Bills Commission Staff is Passively Monitoring:**
  - HB 1198 (Relating to requiring an individual who requests an open record to provide the individual's name and contact information).
  - HB 1344 (Relating to the attorney general's review of proposed administrative rules and the authority of the administrative rules committee to object to or void an administrative rule).
  - HB 1395 (Relating to legislator education training accounts; and to provide an appropriation of \$5,000).
  - HB 1441 (Relating to reports of expenditures made in support of or opposition to legislative candidates; to amend and reenact subsection 7 of section 16.1-08.1-01; and to provide a penalty).
  - SB 2226 (Relating to the required form for measures to amend the constitution and the manner of placing the measures on ballots and the amount of information the voters should be provided).
  - SB 2280 (Relating to the form of the primary election ballot).



4. **Discussion of Advisory Opinion 23-01:** On January 17, 2023, the Ethics Commission received a request for an advisory opinion from John Bjornson, Director of the North Dakota Legislative Council. In accordance with the Commission's policy on Advisory Opinions, Executive Director Binstock reviewed the request and consulted with Chair Richard. She notified Director Bjornson on January 19th that the Ethics Commission would provide an advisory opinion and his name, as the individual requesting the advisory opinion, would be an open record. She noted that the Commission would have 90 days, according to policy, to respond to the request. The request addresses the question of how legislators deal with conflicts of interest and harmonizing with the rules in place with the Ethics Commission. Since it will affect the current legislative session, Binstock indicated that the opinion would be issued in a timely manner. She provided the Commission with a draft opinion and requested the Commission discuss for further direction and suggestions. Chair Richard suggested, based on questions from legislators, that the Commission add wording on its conflict of interest form protecting confidential records. He also suggested that if an entity has their own conflict of interest rule, it must be published and readily available to the public. He further discussed the legislature's conflict of interest rule (Senat and House Rule 321) did not include a "safe harbor" as was provided by the Commission's rule whereby "safe harbor" is provided if a complaint is received by the Commission. He explained that the Commission's rule provides "safe harbor" when the following steps are taken: 1. Conflict is disclosed; 2. Neutral reviewer evaluates, and public official adheres to the suggested course of action; 3. Conflict is documented on a form or in public minutes.

**Motion:** Commissioner Goodman moved to approve the draft advisory opinion as the general direction required by the Commission and to direct Executive Director Binstock to continue to consult with John Bjornson and provide a final draft to the Commission prior to issuance. Motion was seconded by Commissioner Koeser. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

5. **Adjourn:** Meeting adjourned at 2:32 p.m.

Approved on 2/14/2023 

Rebecca Binstock, Executive Director, North Dakota Ethics Commission