

North Dakota Ethics Commission Meeting

Minutes of May 25, 2022

Live Stream MS Teams

1. **Call to Order:** The meeting was called to order by Chair Ron Goodman, at 9:03 a.m. The following members of the Ethics Commission were present: Paul Richard, Ward Koeser and David Anderson. Also present were Ethics Commission legal counsel Allyson Hicks, Executive Director Dave Thiele, and Office Manager Holly Gaugler.
2. **Approval of Agenda:** No additions were made.
3. **Approval of Minutes:** The minutes of the 20 April 2022 meeting were discussed with no changes.

Motion: Commissioner Richard moved to approve the minutes of April 20, 2022 with no corrections. Motion was seconded by Commissioner Anderson. 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 April 20, 2022. Gaugler reported April 2022 expenditures of \$22,153 and total expenditures for the biennium of \$224,399 leaving a remaining biennial budget of \$399,585. Gaugler also reported projected expenditures for the remainder of the biennium (May 1, 2022 through June 30, 2023) at an estimated \$378,823 which would leave an approximate ending balance of \$20,762 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. However, the Commission will most likely begin paying health insurance costs depending on the new Executive Director. Those additional costs would be approximately \$15,000 depending on the start date of the new director.

5. **Executive Director Dave Thiele Update:**

- Thiele discussed the timeline for the Quasi-Judicial Bias rule with the hearing to be held June 1 and additional public comment may be received until June 13. No public comment has yet been submitted. If public comment is received, the Commission will be able to discuss at the June 22-23 meeting.
- Thiele and Commissioner Anderson updated the Commission on the executive director position applications. Anderson stated that after two weeks there were only two applicants with only one meeting minimum qualifications. The recommendation

from Anderson and Thiele is to extend the application deadline another two weeks to June 8th. HRMS will screen for minimum qualifications and then Anderson and Thiele and a representative from HRMS will interview and select finalists depending on the number of qualified applicants. The plan would be to have the Commission interview finalists at the June 22-23 meeting.

- Thiele discussed the upcoming June meeting. It will be a two-day meeting starting at 1:00 pm going until 5:00 pm on the 22nd and starting at 8:00 am on the 23rd going until noon. Other topics at that meeting will include possible finalization of the Quasi-Judicial Bias rule. The meeting will be held at the State Capitol's Sakakawea Room.
- Thiele informed the Commission that he will brief Complaint #22-001 in executive session under the authority of NDCC 54-66-12 and NDCC 44-04-19.2. The findings will be presented in the regular meeting.

6. **Complaint #22-001**

Executive Director Thiele briefed the Commission in executive session the details of his informal resolution of Complaint #22-001. The Commission concurred with the closure and informal resolution of Complaint #22-001. After discussion and closure of this complaint, the Commission also agreed to seek a ND Attorney General legal opinion on ND Constitution Article XIV, Section 3 (2) which reads, in part:

“The ethics commission may adopt ethics rules related to transparency, corruption, elections, and lobbying to which any lobbyist, public official, or candidate for public office shall be subject, and may investigate alleged violations of such rules, this article, and related state laws.”

The opinion would address whether the Commission has the authority to investigate alleged violations of “related state laws” that relate to transparency, corruption, elections, and lobbying or does the language require the Commission to first execute rules relating to those areas.

Motion: Commissioner Richard moved to have Executive Director Thiele draft a request for opinion from the ND Attorney General with the draft reviewed by the Commission before submission at the June 22-23 meeting. The opinion would address the issue on whether the jurisdiction of the ND Ethics Commission on any given complaint dealing with transparency, corruption, elections, and lobbying is dependent on the Commission first having adopted rules on these issues. The motion was seconded by Commissioner Anderson. Chair Goodman called for a roll call vote on the motion. The motion was approved by unanimous roll call vote.

7. **Commission's Discussion of the General Conflict of Interest Rule:**

The Commission discussed two remaining issues in question:

- a. Sections 115-04-01-02 (1) and 115-04-01-03 (1) provide that those sections do not apply if an agency, board, or commission have their own current conflict of interest statute or rule. The Commission agreed there needs to be clarification that those sections do not apply only if their conflict of interest statute or rule is not less restrictive as set forth in Section 115-04-01-05. The Commission also agreed that regardless of whether they use their own rule, all conflict of interest issues must be reported to the Commission as set forth in Section 115-04-01-04.
- b. The Commission discussed and agreed to mirror the general Conflict of Interest rule with the Quasi-Judicial Bias rule in that the public official is the ultimate decision maker as to whether there is a disqualifying conflict of interest but if they do not recuse, they may use the neutral reviewer process and received "safe-harbor" from a complaint filed with the Commission. The current Conflict of Interest rule draft makes utilizing a neutral reviewer mandatory in all cases where the Public Official does not recuse themselves.

The Commission agreed to make these two changes to the general Conflict of Interest rule with Executive Director Thiele presenting a revised draft at the June meeting.

8. **Further Business:** Chair Goodman asked that the Commission discuss the term limits for the Chair and Vice Chair at the June meeting.
9. **Adjourn:** Commission, having no further business, was adjourned at 10:58 a.m. The next meeting is scheduled as an in-person meeting for June 22 and 23rd, 2022, beginning at 1:00 p.m. on June 22nd at the Sakakawea Room of the State Capitol.

Approved on 22 JUNE 2022

Dave Thiele, Executive Director, North Dakota Ethics Commission

