

North Dakota Ethics Commission Special Meeting

Minutes of October 6, 2022

Live Stream MS Teams

1. **Call to Order:** The meeting was called to order by Chairman Richard, at 2:02 p.m. The following members of the Ethics Commission were present: Chairman Paul Richard, Vice-Chairman Dave Anderson, Commissioner Ron Goodman and Commissioner Cynthia Lindquist. Also present were Ethics Commission Legal Counsel Allyson Hicks, Executive Director Rebecca Binstock, and Office Manager Holly Gaugler. Commissioner Ward Koeser was not present.
2. **Instructions for Special Meeting:** Chair Richard instructed the Commission on order of business for the special meeting: The meeting will be limited to the single agenda item to discuss whether the Commission will issue an advisory opinion for a request dated September 29, 2022. Chair Richard instructed that the name of the requester will not be disclosed unless the Commission votes otherwise.
3. **Summary of Opinion Request:** Chair Richard provided the Commission a summary of the request as follows: "Confirmation that a lawful campaign contribution by a Political Action Committee ("PAC") to a state or federal candidate for elected office in North Dakota does not cause the contributing PAC to be defined as a 'party' under N.D.A.C. §§ 115-05-01-02(2) or 115-05-01-04(2), requiring the official to assess potential recusal in a quasi-judicial proceeding, except if the PAC itself is a named party in the quasi-judicial proceeding as in the case of an enforcement action against a PAC."
4. **Discussion of Request for Advisory Opinion:** The Commission discussed the two issues before them pursuant to N.D.C.C. § 54-66-04.2:
 - a. First issue, whether the name of the requester is going to be a closed record pursuant to N.D.C.C § 54-66-04.2(5).

Motion: Commissioner Goodman moved to reveal the name of the requester and make it open to the public. Motion was seconded by Commissioner Lindquist. After further discussion, including discussion of inaccuracy of information on the Commission's website, the Commission, through roll call vote, denied the motion.

Chair Richard asked for another motion instructing Executive Director Binstock to contact the requester, clarify the information on the website, and describe the process outlined by

statute whereby the Commission will determine if the requestor's name is made public; and thereby allowing the requester to determine if he/she wants to withdraw the request based on the clarification of the process.

Motion: Commissioner Anderson moved to have Executive Director Binstock contact the requester and clarify the information on the website along with the process whereby the Commission will determine if the requestor's name is made public, which will allow the requester to determine if he/she wants to withdraw the request based on the clarification of the process. Motion was seconded by Commissioner Lindquist. Chair Richard called for a roll call vote on the motion. The motion was approved by unanimous roll call vote.


- b. Second issue, if the request is not withdrawn, whether the Commission will issue an advisory opinion in response to the request.

Chair Richard called for a motion addressing the issue of unless the requester withdraws the request, will the Commission direct Executive Director Binstock to draft an advisory opinion for the Commission's consideration.

Motion: Commissioner Goodman moved that if the request is not withdrawn, the Commission will consider then if it will direct Executive Director Binstock to draft an advisory opinion. The motion was seconded by Commissioner Anderson. Chair Richard called for a roll call vote on the motion. The motion was approved by unanimous roll call vote.

5. **Discussion of Issuing an Advisory Opinion:** Chair Richard led the discussion on the request for advisory opinion and advised the Commission that if the Commission agreed to issue an advisory opinion, it could only address officials under the jurisdiction of the Commission, namely the Commission does not have jurisdiction over candidates running for federal offices. He expressed concerns there were already provisions in N.D.A.C. §§ 115-05-01 that campaign contributions from a recognized PAC to an official is not subject to the bias analysis unless the PAC is the named party to a quasi-judicial proceeding. Chair Richard and the other Commissioners also expressed concerns that N.D.C.C. § 54-66-04.2(1) requires specified hypothetical facts or prospective conduct, which this request did not state. Chair Richard asked for a vote on whether the Commission will issue an opinion based on the request before us today. The Commission voted unanimously to not issue an opinion.

6. **Adjourn:** Commission, having no further business, was adjourned at 03:15 p.m. The next meeting is scheduled for October 19, 2022, at 9:00 a.m. at the Sakakawea Room at the State Capitol and live stream via MS teams.

Approved on 10/19/2022 

Rebecca Binstock, Executive Director, North Dakota Ethics Commission