

North Dakota Ethics Commission

Minutes of September 12-13, 2019 Special Meeting

Heritage Center Russell Reid Auditorium

612 E. Boulevard Avenue, Bismarck, ND 58505

The meeting was called to order by convening chair, Judge Ronald Goodman, at 1:00 p.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. Convening Chair Goodman asked each Ethics Commission member to introduce themselves and provide a brief description of their backgrounds. Each member then provided a brief summary of their backgrounds.
2. **Motion:** Convening Chair Goodman called for nominations for Chair of the Ethics Commission. Koeser nominated Ronald Goodman as chair. Lindquist seconded the motion. Convening Chair Goodman called for any additional nominations. Anderson moved to close nominations for Chair. Richard seconded the motion. Convening Chair Goodman called for the vote on the motion to close nominations for Chair. The votes were as follows: Lindquist, Anderson, Koeser and Richard voted in favor of the motion. Goodman abstained. Motion approved.

Convening Chair Goodman then called for a vote on the motion nominating Goodman as Chair. The votes were as follows: Lindquist, Anderson, Koeser and Richard voted in favor of the motion. Goodman abstained. Motion approved.

Motion: Chair Goodman called for nominations for Vice-Chair of the Ethics Commission. Richard nominated Dr. Cynthia Lindquist as vice-chair. Koeser seconded the motion. Chair Goodman called for any other nominations. Koeser moved that nominations for Vice-Chair be closed. Richard seconded the motion. Chair Goodman called for the vote on the motion to close nominations for Vice-Chair. The votes were as follows: Goodman, Anderson, Koeser and Richard voted in favor of the motion. Lindquist abstained. Motion approved.

Chair Goodman called for a vote on the nomination of Lindquist as Vice-Chair. The votes were as follows: Goodman, Anderson, Koeser and Richard voted in favor of the motion. Lindquist abstained. Motion approved.

3. The Commission discussed possible future meeting dates for future regular meetings.
October 23, 2019, (1:00 p.m.-5:00 p.m.) and October 24, 2019, (9:00 a.m. until complete)-Location: Pioneer Room in the North Dakota State Capital.

November 13, 2019, (1:00 p.m.-5:00 p.m) and November 14, 2019 (9:00 a.m. until complete); Location: To be determined.

December 11, 2019 (1:00 p.m.-5:00 p.m) and December 12, 2019 (9:00 a.m. complete); Location: To be determined.

January 22, 2020 (1:00 p.m.-5:00 p.m) and January 23, 2020 (9:00 a.m. until complete); Location: To be determined.

February 19, 2020 (1:00 p.m.-5:00 p.m.) and February 20, 2020 (9:00 a.m. until complete); Location: To be determined.

March 11, 2020 (1:00 p.m.-5:00 p.m.) and March 12, 2020 (9:00 a.m. until complete); Location: To be determined.

April 22, 2020 (1:00 p.m.-5:00 p.m.) and April 23, 2020 (9:00 a.m. until complete); Location: To be determined.

May 13, 2020 (1:00 p.m.-5:00 p.m.) and May 14, 2020 (9:00 a.m. until complete). Location: To be determined.

Motion: Koeser moved and Richard seconded a motion to adopt the above dates for future Ethics Commission regular meetings. Chair Goodman called for a vote on the motion by voice vote. The motion was unanimously approved by the Ethics Commission members.
4. Chair Goodman introduced Sandy DePountis, Assistant Attorney General, who provided a briefing on the North Dakota Open Meeting Law. Discussion included what constitutes a meeting, use of e-mails for Ethics Commission business, use of executive sessions, preservation of confidential information as required by law during Ethics Commission meetings. It was recommended that the members review the open meetings law guidance available on the North Dakota Attorney General website. Chair Goodman asked Lindquist to work with Ms. Hicks on open meeting requirements for future Commission meetings.
5. Chair Goodman introduced Lynn Hart with the Office of Management and Budget to provide a briefing on the process used to hire staff to the Commission. Two full time equivalents have been approved in the current biennium. The members discussed the initial need for staff would be an executive director and administrative assistant. Mr. Hart explained that Commission has the option to designate the positions as classified or unclassified positions which primarily differentiates the due process rights of an employee in the event of termination.

OMB is available to assist with human resource needs related to hiring of staff. The Commission is asked to provide more detail on the job specific duties of the Executive Director position for creation of a job description. The members discussed their thoughts on what skill set would be needed in the Executive Director. Chair Goodman asked Anderson to research ethics commission executive director roles and job descriptions in other States, and work with OMB on a possible draft job description for review at the October meeting.

6. Item 6 on the Agenda was delayed until the continuation of the meeting on September 13, 2019.
7. The members discussed attendance at the September 25, 2019, Interim Judiciary Committee meeting in Bismarck where the Ethics Commission and Legislative Assembly Responsibilities will be discussed. Anderson and Richard plan on attending.
8. The members discussed whether the Ethics Commission should become a member of the Council on Governmental Ethics (COGEL). Chair Goodman asked the members to review the information on the COGEL website to get a better understanding of the organization. The decision on whether to join COGEL will be on the October meeting agenda.
9. Item 9 on the Agenda was delayed until the continuation of the meeting on September 13, 2019.

Motion: Chair Goodman asked for a motion to adjourn until 10:00 a.m., September 13, 2019. Koeser moved and Anderson seconded the motion to adjourn until 10:00 a.m., September 13, 2019. The meeting was adjourned at 2:46 p.m., September 12, 2019.

Day 2: September 13, 2019

Chair Goodman called the special meeting of the Ethics Commission to order at 10:00 a.m., September 13, 2019.

10. Chair Goodman introduced Jeff Larshus, Director of State Financial Services, Office of Management and Budget, to present various State procedural items (Agenda item #6). Mr. Larshus introduced Neas and Greg Hoffman who will also participate in the presentation. Mr. Larshus provided the Commission with a handout summarizing his presentation on various topics applicable to the operations of the Ethics Commission and commissioners. Mr. Larshus highlighted points on the handout (Larshus Handout Attached). Discussion was held regarding the procedure to follow to identify and secure office space for the

Ethics Commission office. Chair Goodman asked that Koeser contact John Boyle, OMB, to review options for Ethics Commission office. Koeser will bring a report to the October meeting.

Sherry Neas presented information regarding the State logistics and procurement procedures. Ms. Neas summarized topics such as bidding procedures, central supply services, central duplicating services, and the process to secure professional services. The members discussed the issue of legal counsel needs of the Ethics Commission and the role of the Attorney General's office in providing counsel and the process when there is a conflict that prevents the Attorney General's office from providing legal counsel to the Ethics Commission. Neas indicated that her office is available to assist in the hiring of outside professional counsel. In addition, the Attorney General's office has a process for the appointment of special assistant attorney generals.

Greg Hoffman presented on information technology services and the support available to the Ethics Commission for information technology needs. Mr. Hoffman presented a handout summarizing the information technology services and options, including e-mail setup and specific member technology needs. (Hoffman Handout Attached). Chair Goodman asked Anderson to work with Mr. Hoffman to get the commissioners in the State e-mail system and to address other individual information technology needs of the commissioners such as laptops or other devices.

Motion: Since addressing information technology needs will require the expenditure of funds, Chair Goodman called for a motion for Anderson to work with Mr. Hoffman's office to address the individual information technology needs of the commissioners needed to carry out their duties as members of the Ethics Commission. Koeser so moved and Lindquist seconded the motion. Vote on the motion was as follows: Anderson, Goodman, Lindquist, Koeser and Richard voted in favor of the motion. Motion approved.

Cliff Heyne presented information on the services available to the Ethics Commission for the development of a website. Chair Goodman asked Lindquist to work with Mr. Heyne's office on the development of an Ethics Commission website.

Motion: Since the development of the Ethics Commission website will require expenditure of funds, Chair Goodman called for a motion for Lindquist to work with Mr. Heyne's office to develop the Ethics Commission website and to use State information technology services to develop the Ethics Commission website. Anderson so moved and Koeser seconded the motion. Chair Goodman called

for a vote on the motion. The vote result was as follows: Anderson, Goodman, Lindquist, Koeser and Richard in favor of the motion. Motion approved.

Chair Goodman recessed the meeting at 11:14 a.m. until 1:00 p.m. for commissioners to complete State photo identification cards and have lunch. The meeting was reconvened at 1:00 p.m.

11. Chair Goodman opened a discussion regarding the attendance by commissioners of the September 25, 2019, Legislative Management Study meeting. Each commissioner received an invitation to attend the meeting. Discussion was held regarding who was planning on attending. Richard and Anderson indicated that they plan on attending. If others plan on attending, they are to let Allyson Hicks know as the attendance of a quorum of commissioners may require notice under the North Dakota Open Meetings law. Ms. Hicks indicated that the discussion relevant to the Ethics Commission is not expected to occur until 2:00 p.m. The meeting will start at 9:00 a.m. in the Roughrider Room of the State Capital in Bismarck, ND. The members discussed the role of the commissioners who attend. Ms. Hicks cautioned the attending members that they cannot act as a member of any other branch of government. Ms. Hicks indicated that commissioners cannot be a non-voting member of the Legislative Committee which is holding the meeting. Ms. Hicks advised that the Ethics Commission is a separate constitutionally created entity and cannot be part of another branch of government.
12. Chair Goodman called for a further discussion on Ethics Commission organization and work (Agenda Item #9). Chair Goodman asked Richard to summarize some issues surrounding the constitutional and legislative enactments that exist today related to the creation and work of the Ethics Commission. Richard outlined the process he used to sort out the various provisions of the constitution and century code and how they are applicable to the Ethics Commission structure/organization, the Ethics Commission work/responsibilities, and laws/rules already in effect. The process resulted in some concern about conflicts between the language of Article XIV which was adopted by the voters and North Dakota Century Code Chapter 54-66 along with other statutory amendments specific to the Ethics Commission. One example is the constitutional requirement that the Ethics Commission establish a "confidential whistleblower hotline" and the language of North Dakota Century Code Sections 54-66-05 and 54-66-06 which preclude the investigation of complaints where the complainant does not provide identifying information, and the requirement that the identity of the complainant must be disclosed to the object of the complaint. Other commissioners indicated they had the same

concern about this language. Chair Goodman gave the example of the conflict between the meaning of the word "lobbyist" as contained in constitution and NDCC Chapter 54-66. There was also discussion regarding which provisions are currently effective and those with a future effective date. Ms. Hicks was asked to prepare a timeline for the October meeting summarizing the various effective dates of the constitution and legislative enactments. The commissioners discussed the need for Attorney General guidance on conflicting language in the Constitution and Century Code. Ms. Hicks indicated the Ethics Commission may seek an advisory opinion from the Attorney General's Office on issues the Ethics Commission consider to be in conflict. Chair Goodman asked Richard to work with Ms. Hicks to prepare a summary of potential topics for the October meeting for further discussion of the need to seek an Attorney General Opinion.

Anderson noted that he has reviewed a listing of ethics rules and organizations in other States. He will provide the list to the other commissioners. Anderson stated that an important role of the Ethics Commission is education of the public on the role of the Ethics Commission.

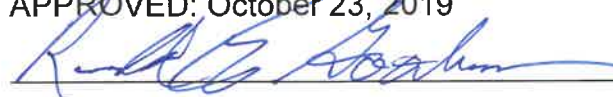
13. Chair Goodman called for a discussion regarding the process for official communication about Ethics Commission business. The commissioners expressed consensus that the Chair, and in the Chair's absence, the Vice-Chair should be the official spokespersons for communications related to Ethics Commission business.

Motion: Chair Goodman called for a motion that the Chair, and in the Chair's absence, the Vice-Chair will be the official spokespersons for communications related to Ethics Commission business. Anderson so moved and Koeser seconded the motion. Chair Goodman called for a vote on the motion. The result of the vote was as follows: Anderson, Goodman, Lindquist, Koeser and Richard voted in favor of the motion. Motion approved.

14. Chair Goodman indicated that the agenda items had been discussed and called for a motion to adjourn the meeting.

Motion: Anderson moved that the meeting of the Ethics Commission adjourn at 2:25 p.m., September 13, 2019. Koeser seconded the motion. Chair Goodman called for a voice vote. All commissioners voted in favor of the motion. Meeting adjourned.

APPROVED: October 23, 2019



Signed: Ron Goodman, Chairman