



# North Dakota Legislative Council

Prepared for the House Appropriations Committee

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## APPROPRIATING FUNDS FOR CONSTITUTIONALLY MANDATED FUNCTIONS

This memorandum responds to two questions concerning appropriation of funds for the North Dakota Ethics Commission.

1. What amount of funding constitutes "adequate funds" for the Ethics Commission to carry out its duties?
2. May funds be appropriated on the basis of the number of investigations the Ethics Commission conducts?

### Question 1

Under Article XVI of the Constitution of North Dakota, the Ethics Commission is required to enact rules and investigate alleged violations of certain ethics-related laws and rules. Section 3 of Article XIV requires the Legislative Assembly to "provide adequate funds for the proper carrying out of the functions and duties of the commission." There is no constitutional definition of "adequate funds," and there is no caselaw providing guidance on that term. A similar provision exists in Article VII of the Constitution and requires the Legislative Assembly to provide adequate funds to the State Board of Higher Education. The North Dakota Supreme Court referred to that provision in a 1975 case called *State ex rel. Walker v. Link*, but the Court merely said the Legislative Assembly may not "refuse to fund a constitutionally mandated function." The Court provided no guidance regarding the amount of funding which would be considered "adequate" other than the amount may not be zero. Additionally, there are no Attorney General opinions on the amount of funding deemed adequate for a constitutionally mandated function.

### Question 2

There does not appear to be a prohibition on appropriating money on a per-investigation basis. The general appropriation language for state agency budget bills includes the phrase "or so much of the funds as may be necessary." That language acknowledges the amount an agency uses may be less than the total amount appropriated. The language may be tailored to provide for an appropriation of a set dollar amount, or so much of the funds as may be necessary, not to exceed a different set dollar amount per investigation.