

Before the North Dakota Ethics Commission

Requested by:
Representative Zachary Ista

ADVISORY OPINION NO. 25-04

On May 13, 2025, the Ethics Commission (“Commission”) received an advisory opinion request from Representative Zachary Ista. Based on its review of the request, the Commission decided to issue an advisory opinion pursuant to N.D.C.C. § 54-66-04.2. The question presented to the Commission for consideration is:

1. Under N.D. Const. art. XIV’s gift prohibition and the Commission’s rules, is it permissible for a legislator to attend a trip to Israel funded by the Israel Ministry of Foreign Affairs?

I. FACTUAL BACKGROUND

With the request for an advisory opinion, Representative Ista attached the invitation he received from the Consul General of Israel to the Midwest. The event will take place on September 13-18, 2025. Legislators from all states have been invited to attend. The Israel Ministry of Foreign Affairs will pay for the event by providing roundtrip economy airfare, transportation while in Israel, accommodations, meals, and guided programming. The invitation states:

On behalf of the Ministry of Foreign Affairs of the State of Israel and the Consulate General of Israel to the Midwest, I am honored to invite you to participate in 50 States, One Israel—a landmark bipartisan delegation of senior state legislators from across the United States.

This historic five-day study tour will bring together over 200 legislators from all 50 states, representing both the Democratic and Republican parties, for an in-depth exploration of Israel’s leadership, society, heritage, and spirit of innovation.

Participants will gain firsthand insight into the complexities and opportunities facing Israel today through high-level meetings with Israeli decision-makers, site visits to key national and cultural landmarks in Jerusalem and beyond, and direct engagement with experts in political, social, and academic fields. This journey offers a rare opportunity to deepen understanding, foster dialogue, and strengthen relationships between Israel and the American people—state by state.

The Ministry of Foreign Affairs will provide roundtrip economy airfare from New York to Tel Aviv (including domestic U.S. flights to NYC) and all in-country transportation, accommodations, meals, and guided programming.

(Emphasis in original).

Following its review of the invitation, the Commission received additional information from the Consulate General of Israel to the Midwest, including a tentative itinerary. Among the items on the itinerary are meetings with Israeli officials and politicians, including the prime minister, to learn about Israel’s system of government and the security of the region, visits to cultural and historic sites, a dinner with the Israel’s president to “provide a broader civic and moral perspective on Israeli society, democracy, and national identity,” and an event with the U.S. Ambassador to Israel. Commission staff asked whether there will be any action items or requests of legislators during the trip. In response, a representative from the consulate said, “There will be no action items or requests of legislators. It’s a study tour with the goal to let the legislators experience Israel and to understand it better.” (Emphasis in original).

II. LEGAL BACKGROUND

A. Article XIV and the Ethics Commission’s Rules

Section 2 of Article XIV of the North Dakota Constitution provides the baseline lobbyist gift prohibition. It states:

A lobbyist may not knowingly give, offer, solicit, initiate, or facilitate a gift to a public official. A public official may not knowingly accept a gift from a lobbyist.

...

“Gift,” as used in this subsection, means any item, service, or thing of value not given in exchange for fair market consideration, including gifts of travel or recreation. However, “gift” does not mean any purely informational material, campaign contribution, or, in order to advance opportunities for North Dakota residents to meet with public officials in educational and social settings inside the state, any item, service, or thing of value given under conditions that do not raise ethical concerns, as determined by rules adopted by the ethics commission.

N.D. Const. art. XIV, § 2(1).

As made clear by the language of Article XIV, items, services, and things of value are excluded from the definition of a gift when given in exchange for fair market consideration. Given in exchange for fair market consideration means the item, service, or thing of value must be given in exchange for something that is roughly equal in market value to the thing being exchanged. *See Fair Consideration, Black’s Law Dictionary* (12th ed. 2024); *Kelsh v. Jaeger*, 2002 ND 53, ¶ 7, 641 N.W.2d 100 (“When interpreting the state constitution, our overriding objective is to give

effect to the intent and purpose of the people adopting the constitutional statement. The intent and purpose of a constitutional provision is to be determined, if possible, from the language itself. We give words in a constitutional provision their plain, ordinary, and commonly understood meaning.”).

Section 54-66-03, N.D.C.C., codifies the gift provision of Article XIV and outlines civil penalties for violations of the section. In 2020, the Commission adopted rules related to gifts by lobbyists. N.D. Admin. Code ch. 115-02-01. These rules further define the terms “gift,” “lobby,” and “lobbyist.” Section 115-03-01-01(2), N.D. Admin. Code, defines “gift” to mean “any item, service, or thing of value not given in exchange for fair market consideration, including gifts of travel and recreation.” The term “lobby” means:

- a. Attempts to secure the passage, amendment, or defeat of any legislation by the legislative assembly or the approval or veto of any legislation by the governor of the state.
- b. Attempts to influence decisions made by the legislative management or by an interim committee of the legislative management.
- c. Attempts to secure passage, amendment, or defeat of any administrative rule or regulation by any department, agency, or body of the state’s executive branch.
- d. Attempts to otherwise influence public official action or decision.

N.D. Admin. Code § 115-03-01-01(4).

Additionally, a “lobbyist” is defined as a “person who engages in activity that falls within the definition of the term ‘lobby.’” N.D. Admin. Code § 115-03-01-01(5). However, it does not include:

- (1) A legislator;
- (2) A private citizen appearing on the citizen’s own behalf;
- (3) An employee, officer, board member, volunteer, or agent of the state or its political subdivisions whether elected or appointed and, whether or not compensated, who is acting in that person’s official capacity;
- (4) [An individual] [i]nvited by the chairman of the legislative management, an interim committee of the legislative management, standing committee of the legislative assembly, or an official of any department, agency, or body of the state’s executive branch to appear before the legislative management, interim committee, or standing committee for the purpose of providing information; or

- (5) An individual who appears before a legislative committee for the sole purpose of presenting testimony on behalf of a trade or professional organization or a business or industry if the individual is introduced to the committee by the registered lobbyist for the trade or professional organization or the business or industry.

Id.

The baseline rule is that lobbyists may not knowingly give, offer, solicit, initiate, or facilitate a gift to a public official in conjunction with any effort by the lobbyist to lobby the public official. N.D. Admin. Code § 115-03-01-02(1). Reciprocally, a public official may not knowingly accept a gift from a lobbyist offered in conjunction with the lobbyist's efforts to lobby the public official. *Id.*

However, there are several exceptions to this general baseline rule. *Id.* These exceptions apply to private social and educational events, public social and educational events, and informal social and educational events held within the state of North Dakota. N.D. Admin. Code §§ 115-03-01-03, 115-03-01-01(3), (7), (9). For these in-state events, payment of travel expenses for a public official is permitted when the public official "meaningfully participates in the event as a speaker or panel participant, presenter, or ceremonial event appropriate to the position, or if attendance is appropriate to the performance of official duties." N.D. Admin. Code § 115-03-01-03(5). The payment of travel expenses must not exceed Office of Management and Budget Fiscal Policy #505. *Id.*

Article XIV's gift prohibition enables the Commission to make exceptions for lobbyist gifting for in-state events only. *See* N.D. Const. art. XIV, § 2(1). The Commission cannot make exceptions to Article XIV's lobbyist gift prohibition for out-of-state events. *Id.* A different analysis applies when reviewing out-of-state events.

B. Out-of-State Events

When out-of-state events are at issue, including out-of-country events, two questions apply: (1) whether the item, service, or thing of value is a gift; and (2) if the item is a gift, whether it is "given in conjunction with an effort to lobby a public official by a lobbyist." *Id.*; N.D. Ethics Comm'n, Advisory Op. 23-02, 5 (2023). In Advisory Opinion 23-02, the Commission analyzed an event happening outside North Dakota and focused its analysis on the second question. In determining whether the host organization was permitted to provide a gift, Advisory Opinion 23-02 said, "The linchpin of this analysis is answering the question whether an entity, organization, business, or group is 'lobbying' the public official." N.D. Ethics Comm'n, Advisory Op. 23-02, 4 (2023). The Commission explained:

When determining whether out-of-state travel expenses (which may include registration fees, per diem reimbursements, hotel costs, food, and/or beverages) are prohibited gifts under Section 115-03-01-02, one needs to ask two fundamental questions: (1) is the travel expense a gift and (2) is the gift given in conjunction with an effort to lobby a public official by a lobbyist. If the answer to both of these

questions is “yes” then the travel expense is a prohibited gift under Section 115-03-01-02.

To answer the first question, travel expenses are unquestionably gifts under Title 115 - it is specifically referenced as an example of a gift in Section 115-03-01-01 (2). To answer the second question, one needs to look to the definition of the terms “lobby” and “lobbyist.” The term “lobby” means:

- a. Attempts to secure the passage, amendment, or defeat of any legislation by the legislative assembly or the approval or veto of any legislation by the governor of the state.
- b. Attempts to influence decisions made by the legislative management or by an interim committee of the legislative management.
- c. Attempts to secure passage, amendment, or defeat of any administrative rule or regulation by any department, agency, or body of the state’s executive branch.
- d. Attempts to otherwise influence public official action or decision.

N.D.A.C. § 115-03-01-01(4). Determining whether “lobbying” will or has occurred at an out-of-state event is most easily identifiable when it falls within the definitions outlined in subsection (a) through (c) above. However, additional guidance may better help public officials identify whether a lobbyist is attempting “to otherwise influence public official action or decision.” N.D.A.C. § 115-03-01-01(4)(d).

There is a spectrum of activities and efforts that may be considered “lobbying” as defined in subsection (d). Some out-of-state conferences and events provide objective, educational materials regarding pertinent topics - these conferences may present research-based findings, hold panel discussions with experts on topics, or provide factual updates on developing areas. The Commission compares these objective educational out-of-state conferences to continuing education, professional development, or vocational training. These types of out-of-state conferences and events are unlikely to be considered lobbying as defined in N.D.A.C. § [115-03-01-01(4)] as these are aimed at providing education only.

Other out-of-state events may present information from a particular perspective and are consequently more subjective. The individuals preparing materials, presenting materials, or engaging in discussions at an event may have an agenda that aligns with a political, social, or educational agenda. While these events present information, it is often presented through a filter than aligns to an agenda and opposing views are excluded. These types of out-of-state conferences and events

may be considered lobbying as defined in N.D.A.C. § [115-03-01-01(4)]. Public officials should exercise caution and fully determine whether there are attempts, either passively or actively, to influence their action and decisions. Consequently, these types of events or conferences should be evaluated for “attempts to influence public official action or decision” on a [c]ase-by-case basis. See N.D.A.C. § 115-03-01-01(4)(d).

When reviewing these types of out-of-state events for lobbying efforts, public officials can consider the following factors:

- (1) Overarching objectives of the event sponsor(s);
- (2) Topics of presentations, panel discussions, or social occasions;
- (3) Scope and type of invitees to the event;
- (4) Materials provided to a public official before, during, and after the out-of-state event; and
- (5) Communications received by a public official before, during, and after the out-of-state event from the event sponsor or other invitees.

Yet, other out-of-state events clearly attempt to persuade or influence public official action or decision. For instance, when a public official attends an out-of-state event and is presented with scripted or suggested legislation to bring back to North Dakota, lobbying as defined in N.D.A.C. § 115-03-01-01(4)(a)-(d) can unquestionably occur.

Ultimately, it is the responsibility of the public official to determine whether there is an attempt to influence official action or decision when accepting travel expenses related to out-of-state events. Moreover, such evaluation by a public official may need to be made for separate and distinct events (such as dinners, socials, or tours) held at a conference. If a public official determines there is an attempt to influence official action, the public official has the ability to leave the event or stay and pay market value for attendance at the event in accordance with N.D.A.C. § 115-03-01-02.

In order for the gift prohibition to apply, the gift must be given by a “lobbyist.” A “lobbyist” is defined as a “person who engages in activity that falls within the definition of the term ‘lobby.’” N.D.A.C. § 115-03-01-01(5). The term lobbyist, as defined within N.D.A.C. [ch. 115-03-01], is more expansive than the definition of “lobbyist” within N.D.C.C. § 54-05.1-02 who are required to be registered with the Secretary of State. The term “lobbyist” as used in N.D.A.C. [ch. 115-03-01]

excludes certain individuals from being considered lobbyists. See N.D.A.C. § 115-03-01-01(5). A “lobbyist” does not include legislators; private citizens who appear on the citizen’s own behalf; employees, board members, volunteers, or agents of the state or its political subdivisions when those individuals are acting in their official capacity. Id.

Id. at 5-7.

In Amended Advisory Opinion 25-02, the Commission clarified “travel expenses are unquestionably gifts unless given in exchange for fair market consideration.” N.D. Ethics Comm’n, Amended Advisory Op. 25-02, 8 (2025). In that opinion, the Commission determined when fair market consideration is exchanged by the public official working at an event, payment of travel expenses is not a gift. *Id.*

III. ETHICS ANALYSIS

To answer Representative Ista’s question, the Commission must answer the following: (1) is the expense a gift; (2) can representatives of foreign governments be considered lobbyists; and (3) is the gift given in conjunction with an effort to lobby a public official by a lobbyist.

A. Travel, Lodging, and Meal Expenses

Here, Representative Ista has not been asked to work at the event sponsored by the Israel Ministry of Foreign Affairs. He has also not been asked to provide anything, other than his attendance, in exchange for the payment of his expenses. As a result, the fair market consideration analysis does not apply. Therefore, travel, lodging, and meal expenses in this context are gifts, as they are things of value not given in exchange for fair market consideration. N.D. Const. art. XIV, § 2(1).

B. Representatives of Foreign Governments Can Be Considered Lobbyists

The definition of a lobbyist excludes certain people, including legislators, private citizens appearing on their own behalf, and public servants of the state and its political subdivisions. N.D. Admin. Code § 115-03-01-01(5). No such exception is made for agents representing foreign governments. *See id.* Therefore, when these other people, including foreign government officials, engage in lobbying activity on trips, they cannot offer gifts to public officials and public officials cannot accept gifts they offer.

C. Lobbying will Likely Not Occur on the Israel Trip

Since travel in this instance would be a gift and foreign agents can be lobbyists, the Commission must determine whether lobbying will occur on the Israel trip. Specifically, the Commission must look to whether there will be “attempts to otherwise influence public official action or decision.” Because the trip will likely present information in a way “that aligns with a political, social, or educational agenda,” the Commission will analyze the five factors from Advisory Opinion 23-02. The five factors are as follows: (1) overarching objectives of the event sponsor(s); (2) topics of

presentations, panel discussions or social occasions; (3) scope and type of invitees to the event; (4) materials provided to a public official before, during, and after the out-of-state event; and (5) communications received by a public official before, during, and after the out-of-state event from the event sponsor or other invitees.

For the first two factors, it appears the trip will focus on providing education to the legislator participants. Based on the information reviewed by the Commission, including the tentative itinerary, the participants will engage in educational events studying Israel's government and history by meeting with Israeli officials and touring historical and cultural sites. Additionally, according to the Consulate General of Israel to the Midwest, the objective of the trip is "a study tour with the goal to let the legislators experience Israel and to understand it better."

The scope and type of invitees to the event consists of state legislators from all fifty states. However, in this instance the Commission does not view this factor as dispositive given additional information provided by the event sponsor. Specifically, the Consulate General of Israel to the Midwest represented to the Commission that these legislators will not be given action items or have requests of official action made to them. Based on these representations and the materials the Commission has reviewed; the Commission believes the trip will provide a non-lobbying immersive experience with an educational focus to learn about Israel and its region of the world.

D. Further Considerations

The Commission must note the analysis presented above is narrow and specific to the facts outlined in the materials provided to the Commission and representations made by the event sponsor. It is not blanket approval of travel paid by foreign governments. If the structure of the event does not align with these representations, the Commission will not penalize the attendee(s) for relying on the representations but will instead look for an explanation from the event sponsor. Additionally, if public officials are given similar invitations by foreign governments, the Commission strongly encourages public officials to request an advisory opinion for an analysis of those specific facts.

Further, the type of travel contemplated by this trip illustrates the basis for the Commission proposing travel disclosure rules. Currently there is no filing office or depository of information subject to open record requests for disclosure of these types of trips. This lack of disclosure occurs partly because these types of trips are not funded by the budget for a public official's office. However, these trips are still tied to a public official's status as a public official and should be disclosed to ensure the people of North Dakota have "information to choose candidates for office, vote on ballot measures, and ensure that their representatives are accountable." N.D. Const. art. XIV, § 1(1).

IV. CONCLUSION

The Commission answers Representative Ista's question as follows:

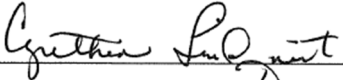
1. Yes, it is permissible for a legislator to attend the trip sponsored by the Israel Ministry of Foreign Affairs taking place on September 13-18, 2025.

Please note the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and court orders or opinions. Until and unless subsequent developments in the law occur, criminal and civil penalties may not be imposed upon an individual for an action taken in accordance with this advisory opinion when: (1) the individual acts in good faith; and (2) the material facts surrounding the action taken are substantially the same as the conduct presented in the opinion. N.D.C.C. § 54-66-04.2(4).

In accordance with N.D.C.C. § 54-66-04.2, the Commission will publish this advisory opinion on its website. The Commission thanks Representative Ista for seeking advice regarding this issue.

This advisory opinion was approved by the Commission at a special meeting held on July 30, 2025.

Dated this 30th day of July, 2025.



Cynthia Lindquist, Chair
North Dakota Ethics Commission