



Before the North Dakota Ethics Commission

Requested by:
Dylan Gonser, North Dakota
Library Association

ADVISORY OPINION NO. 26-03

On February 27, 2026, the Ethics Commission (“Commission”) received an advisory opinion request from Mr. Dylan Gonser, on behalf of the North Dakota Library Association (“NDLA”). 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. NDLA seeks guidance regarding handing out prize items during the North Dakota Library Joy Week at the state capitol. The question presented to the Commission is summarized below:

1. Does providing small, miscellaneous prizes, such as stickers, bookmarks, t-shirts, pencils, tote bags, and other similar items to the general public, including legislators, violate any ethical standards or regulations within North Dakota?

I. FACTUAL BACKGROUND

In the request for an advisory opinion, Mr. Gonser describes the prospective event at issue. The request states:

The North Dakota Library Association (NDLA) is scheduled to have a couple of tables/booths set up at the State Capitol on February 4th, 2027, for our North Dakota Library Joy Week.

Official Event Description:

Library workers and supporters from libraries across the state of North Dakota will be at the North Dakota State Capitol to include state legislators, government officials, and the public in the second annual North Dakota Library Joy Week! National “Bring Your Child to Work Day” falls on the first Saturday in February, so the first week of the month is a time when North Dakota libraries can reminisce and gather moments of Library Joy from patrons, staff, and community members. Every day, someone at a library is having a small and transformative experience; and the North Dakota Library Association wants to share those moments with the Capitol.

Libraries from public, school, academic, and special libraries will be present to showcase moments of North Dakota Library Joy, as well as to provide general information about the North Dakota Library Association and individual libraries. Please stop by and enjoy stories, chat with a library worker, and learn more about the libraries of this amazing state!

As a part of our booths/tables, we were wanting to know if we would be allowed to also use a prize wheel to hand out free swag items from the various libraries attending. The “prizes” would be the same types of items that the attending libraries already give out for free using their own prize wheels during outreach events. Such items have included: Stickers, Bookmarks, T-shirts, Pencils, Tote Bags, and other small miscellaneous items. Since anyone in attendance would be able to get the same free items at any of the library outreach events located at other venues, would it be ok for legislators who stop by to also spin the wheel to receive prizes?

Mr. Gonser also informed the Commission that the individual libraries in attendance at the event will be the ones providing the prizes. He stated that NDLA would only provide purely informational brochures and pamphlets regarding its services and resources. Mr. Gonser informed the Commission that to the best of his knowledge, all participating libraries would be governmental entities, with the only potential exception being private school or university libraries.

II. LEGAL BACKGROUND

In North Dakota, ethics laws governing gifts to public officials are found in three sources: (1) Article XIV of the North Dakota Constitution; (2) ethics rules in N.D. Admin. Code ch. 115-03-01; and (3) the civil penalty provision in N.D.C.C. § 54-66-03(3).

A. Article XIV

Article XIV, § 2(1), N.D. Const., provides a baseline prohibition of lobbyist gifting. 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. These prohibitions do not apply if the lobbyist is an immediate family member of the public official. “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. Such rules must be adopted within two years after the effective date of this article. So as to allow for the adoption of these rules, these prohibitions shall take effect two years after the effective date of this article. Appropriate civil and criminal sanctions for violations of this subsection shall be set by the legislative assembly.

Article XIV, § 4(2), N.D. Const., defines “public official” stating, “For the purposes of this article, ‘public office’ or ‘public official’ means any elected or appointed office or official of the state’s executive or legislative branch, including members of the ethics commission, or members of the governor’s cabinet, or employees of the legislative branch.” The Commission may assess a civil monetary penalty on any individual, a public official, and/or lobbyist, who violates the constitutional prohibition. N.D.C.C. § 54-66-03(3).

B. Ethics Rules

Article XIV directs the Commission to adopt exceptions to the gift prohibition in order “to advance opportunities for North Dakota residents to meet with public officials in educational and social settings inside the state.” N.D. Const. art. XIV, § 2(1). In accordance with Article XIV, § 2(1), the Commission adopted ethics rules regarding lobbyist gifts in N.D. Admin. Code ch. 115-03-01. The rules provide exceptions to Article XIV’s lobbyist gift prohibition. N.D. Admin. § 115-03-01-01(4)-(5); N.D. Op. Att’y. Gen. 2020-L-09, at 1, 6.

1. Definitions of Lobby and Lobbyist

Definitions of “lobby” and “lobbyist” are broader under the lobbyist gift rules than in statute. *Compare* N.D.C.C. § 54-66-01(7)-(8) *with* N.D. Admin. Code § 115-03-01-01(4)-(5). These different definitions serve separate and distinct purposes. The statutory definition regulates when a person is required to register as a lobbyist with the secretary of state and is limited to legislative lobbying. N.D.C.C. § 54-66-01(7)-(8); N.D.C.C. ch. 54-05.1. However, the Commission’s more expansive definition applies for the purpose of determining when an individual violates Article XIV’s lobbyist gift prohibition.

With the purpose of the lobbyist gift prohibition in mind, the Commission exercised its constitutional authority to expand the definition of lobby “to address attempts to otherwise influence public official action or decision” that occur outside the legislative process. N.D. Op. Att’y Gen. 2020-L-09, at 4-5. The Commission’s rules expand “lobbying” to also include “[a]ttempts to secure passage, amendment, or defeat of any administrative rule or regulation by any department, agency, or body of the state’s executive branch” and “[a]ttempts to otherwise influence public official action or decision.” N.D. Admin. Code § 115-03-01-01(4)(c)-(d). The full definition of lobby under the Commission’s rules includes:

- 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).

An “individual, partnership, entity, political committee, association, corporation, cooperative corporation, limited liability company, or other organization or group of persons” who engages in lobbying is considered a “lobbyist.” *Id.*; N.D. Admin. Code § 115-03-01(5)-(6). However, certain individuals are not considered a “lobbyist” under the statutes and ethics rules, regardless of their conduct. These individuals 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] invited by the chairman of the legislative management, an interim committee of the legislative management, or a standing committee of the legislative assembly to appear before the legislative management, interim committee, or standing committee for the purpose of providing information; and
- (5) A person 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 person is introduced to the committee by the lobbyist for the trade or professional organization or the business or industry.

N.D. Admin. Code § 115-03-01-01(5).

2. **Lobbyist Status is Activity Based**

In Advisory Opinion 25-05, the Commission stated:

Although the Commission’s definition of lobbyist overlaps with the statutory definition of a registered lobbyist, the two definitions serve separate and distinct purposes. Registration as a lobbyist does not mean a person or organization is a lobbyist for purposes of the lobbyist gift prohibition. While it can be indicative that someone meets the Commission’s definition of a lobbyist, it is not dispositive. Instead, one must analyze the Commission’s definition of lobbyist in the gift rules.

When reviewing the Commission’s rules, one must look to the plain language of the rule. *See State v. Ebertz*, 2010 ND 79, ¶ 8, 782 N.W.2d 350. Upon review, it is

clear the Commission's definition of lobby and lobbyist focus on event-based activities. It describes specific, momentary actions. The definitions do not create an ongoing status or occupation. One must engage in "lobbying" to meet the definition of "lobbyist." The critical determination then turns on the action and timing of this lobbyist status. However, the rule does not explicitly define the window of time in which a person is considered a lobbyist when the person engages in lobbying activity.

Examining the rule more closely, it uses present tense language to describe lobbying activity. The use of present tense, and not past tense, indicates being a lobbyist is tied to current or proximate lobbying activity. Once a person stops lobbying activity, they are no longer a lobbyist for the purpose of the lobbyist gift prohibition. Therefore, the Commission will look at the current and proximate timing of lobbying to determine whether someone is a lobbyist under the gift rules.

N.D. Ethics Comm'n Advisory Op. 25-05, 7 (2025).

3. Exceptions to Article XIV's Lobbyist Gift Prohibition

The Commission's lobbyist gift rules establish eight exceptions to Article XIV's prohibition:

- (1) A gift by a lobbyist who is a member of the public official's immediate family.
- (2) Any item given where the public official is paying fair market value for the item.
- (3) Purely informational material.
- (4) A campaign contribution that is given in accordance with all applicable state laws, rules, and regulations governing campaign contributions.
- (5) Reimbursement or payment for transportation, lodging costs, and meal costs not to exceed rates as authorized under North Dakota century code section 44-08-04 and office of management and budget Fiscal Policy #505 to facilitate attendance to a public or private educational and social event within the state, if 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.
- (6) Gifts or other things of value shared as a cultural or social norm as part of a public or private social and educational event.

- (7) Food and beverage served for immediate consumption at any private or public social and educational event.
- (8) Food or beverage with a value of ten dollars or less, excluding gratuity, purchased for a public official in conjunction with an informal social and educational event. The purchased food and beverage must be consumed during the event. A state resident must be present but is not required to be the purchaser of the food or beverage.

N.D. Admin. Code § 115-03-01-03.

III. ETHICS ANALYSIS

To answer the question of whether the prizes are considered an exception to Article XIV's lobbyist gift prohibition, the Commission must analyze: (1) whether the prizes are considered "gifts"; and (2) whether the libraries and/or librarians that are providing those items are considered "lobbyists" for purposes of Article XIV's gift prohibition.

A. Libraries Will Provide Prizes

Based on the information provided to the Commission, it appears the individuals who stop at the booths will not provide anything of value in return for the prizes. As a result, when libraries hand out prizes to public officials who engage with their booth, the prizes are "item[s] of value not given in exchange for fair market consideration." *See* N.D. Const. art. XIV, § 2(1). Because no fair market consideration is exchanged, the prizes fit the definition of a "gift" under Article XIV of the North Dakota Constitution. The Commission must now analyze whether the prizes will be offered to public officials by a lobbyist.

B. By Definition, Public Librarians are not Lobbyists

In order for a public official to accept a prize, a lobbyist cannot provide the prize. An "individual" who engages in "lobbying" is considered a "lobbyist," unless the individual fits under an exception to the definition of lobbyist. The North Dakota Library Joy Week, hosted by NDLA, will have librarians from public, school, academic, and special libraries present at booths handing out prizes to patrons who engage with them.

By working at a public library or public school, these individuals are employees of the state or political subdivisions of the state. These librarians act in their official capacity when handing out items from their libraries. Therefore, these librarians that are at booths providing prizes to public officials are excluded from the definition of "lobbyist" due to their status as public or government employees acting in their official capacity.

In coming to this conclusion, the Commission notes and specifically finds that the "prizes" are not being given or provided by representatives of the NDLA, but rather individual local libraries.

Accordingly, a librarian representing a local library is not considered a lobbyist within the applicable definition.

C. Non-Governmental Libraries May Not Provide Gifts

In the event libraries from private schools, colleges, or universities decide to attend, NDLA must exclude any prizes individuals from these institutions would provide. By setting up a booth in the North Dakota State Capitol during the 70th Legislative Session, non-governmental libraries are engaging in lobbying by attempting to “influence public official action or decision” to support their library, whether implicitly or explicitly. The timing of the event during a legislative session, its location in the state capitol, the direct proximity to legislators and other public officials, and the probability of contact with legislators and other public officials supports the conclusion that lobbying activity will occur. As a result, these libraries and their employees would not fit under any exception for “lobbyists,” because the individuals are employees of private organizations—not public or government employees acting in their official capacity. Further, no other exception to the definition of “lobbyist” applies to the non-governmental libraries. Therefore, Article XIV prohibits the non-governmental libraries and their employees from providing prizes to public officials.

D. NDLA May Provide Purely Informational Material

Because NDLA is only providing purely informational brochures or pamphlets regarding the services and resources it offers, NDLA’s activity falls under the “purely information material” exception to the lobbyist gift rules. Therefore, it is permissible for NDLA to hand out informational brochures to the public officials at the state capitol during the North Dakota Library Joy Week.

IV. CONCLUSION

For the reasons set forth above, the Commission answers Mr. Gonser’s question as follows:

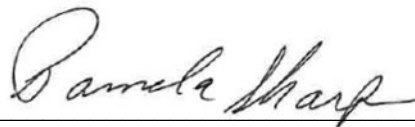
1. Providing small, miscellaneous prizes to the general public, including legislators, does not violate ethical standards or regulations within North Dakota, when the individuals handing out the prizes to public officials are employees of the state or its political subdivisions acting in their official capacity.

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 Mr. Gonser for seeking advice regarding this issue.

This advisory opinion was approved by the Commission at a regular meeting held on August 26, 2026.

Dated this 26th day of August, 2026.

A handwritten signature in cursive script, reading "Pamela Sharp", written over a horizontal line.

Pamela Sharp, Chair
North Dakota Ethics Commission