



Before the North Dakota Ethics Commission

Requested by:
Representative Kathy Frelich

ADVISORY OPINION NO. 26-07

On April 30, 2026, the Ethics Commission (“Commission”) received an advisory opinion request from Representative Kathy Frelich. 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 summarized below.

1. Is it permissible for a legislator to attend a trip sponsored by the Council of State Governments in Denver, Colorado?

I. FACTUAL BACKGROUND

In the request for an advisory opinion, Representative Frelich describes the event at issue. The request states:

I’ve been asked to attend a CAPE Youth Works conference in Denver CO on August 5-7th. This is a [Council of State Governments] sponsored event and the travel and hotels are reimbursed along with the transfer from the airport to the hotel. The airfare is approximately \$600 and I will have to stay until August 8th to make flight arrangements back to Devils Lake.

In an attachment to the request for an advisory opinion, Representative Frelich provided details on the event and the reimbursement for travel expenses. According to the details provided, reimbursement is provided for working group members. The reimbursement is cosponsored by the Council of State Governments (“CSG”) and CAPE-Youth, the Center for Advancing Policy on Employment for Youth. The hotel reservations will be covered by the CSG. The airline ticket and ground transportation cost will be reimbursed by CAPE-Youth.

The Legislative Assembly is a member of several nonpartisan research and professional development organizations that host conferences and other events. The Legislative Assembly pays dues to these organizations as a member, including CSG. As part of its membership in these organizations, the Legislative Assembly receives member benefits, including travel reimbursement for its members and employees to attend events. Following their attendance at these membership organization events, legislators report their attendance on the Legislative Assembly’s

report on out-of-state meeting form. The completed report on out-of-state meeting forms are kept on file with Legislative Council.

CAPE-Youth, “is a consortium led by [CSG] and includes the K. Lisa Yang and Hock E. Tan Institute on Employment and Disability at Cornell University, the Interwork Institute at San Diego State University, and the National Association of Workforce Development Professionals.” CAPE-Youth, <https://capeyouth.org/> (last visited July 20, 2026). According to its website, CAPE-Youth “provides state workforce system leaders and practitioners with technical assistance to strengthen strategic partnerships, workforce systems coordination, professional development, and career pathways to increase job opportunities for American youth and young adults with disabilities.” *Id.* The funding is provided by the U.S. Department of Labor’s Office of Disability Employment Policy. *Id.*

II. LEGAL BACKGROUND

A. Article XIV and the Ethics Commission’s Lobbyist Gift Rules

Section 2 of Article XIV of the North Dakota Constitution provides a 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 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.

B. Out-of-State Events

When out-of-state events are at issue, 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 that 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.

C. The Ethics Commission’s Travel Disclosure Rules

On July 1, 2026, the Commission’s newly adopted travel disclosure rules went into effect. The Commission adopted the travel disclosure rules to require disclosure of travel taken in relation to a public official’s status as a public official that is not reported anywhere else. The Commission assigned the term “third-party-funded travel” to this type of travel. N.D. Admin. Code § 115-06-01-01(6). “Third-party-funded travel” is defined as:

travel, whether within or outside the state, undertaken by a public official, or the public official’s immediate family, in relation to the public official’s status as a public official, including travel paid with federal, state, tribal, or local public funds. It does not include:

- a. Travel paid with a public official’s personal or campaign finances;
- b. Policy-monitored travel;
- c. Travel, the details of which are confidential under state law as defined in North Dakota Century Code section 44-04-17.1; or
- d. Travel actively to support or oppose a candidate or political party.

N.D. Admin. Code § 115-06-01-01(6).

Under the travel disclosure rules, third-party-funded travel must be reported to the Commission “within fifteen days following the conclusion of third-party-funded travel.” N.D. Admin. Code § 115-06-01-02. The Commission then publishes the submitted travel disclosure statements on its website. N.D. Admin. Code § 115-06-01-04. Sanctions may apply for non-compliance with the travel disclosure rules. N.D. Admin. Code § 115-06-01-05.

During its development of the rules, the Commission did not want to require duplicate reporting for travel that is already reported elsewhere within the state system. The Commission learned there were two main areas where travel was already reported: (1) on the state’s enterprise resource planning system, a/k/a Peoplesoft; and (2) on the Legislative Assembly’s report on out-of-state meeting form. With this in mind, the Commission assigned the term “policy-monitored travel” to this type of travel and excluded it from the travel disclosure rules. N.D. Admin. Code § 115-06-01-01(4), (6).

During its research, the Commission learned the Legislative Assembly requires legislators to complete the report on out-of-state meeting form for certain events. Legislators are required to submit the Legislative Assembly’s form when attending an event sponsored by an organization the Legislative Assembly pays dues to as a member. The Legislative Assembly will also begin collecting information when “travel expenses are paid both by the Legislative Council and another third party to prevent a public official from being required to report travel expenses for the same trip to two different entities.” N.D. Legis. Council, *The Council* (July 6, 2026), <https://ndlegis.gov/sites/default/files/pdf/newsletter/newsletter07062026.pdf>.

III. ETHICS ANALYSIS

To answer Representative Frelich’s question, the Commission must answer the following: (1) is the payment of travel expenses by CSG and CAPE-Youth a gift; and (2) if it is a gift, is it given in conjunction with an effort to lobby a public official.

A. The fair market consideration exception applies for a portion of the expenses.

As noted above, the language of Article XIV specifically excludes items, services, and things of value, including travel expenses, from the definition of a gift when given in exchange for fair market consideration. The Legislative Assembly pays membership dues to the research and professional development organizations it participates in, including CSG. Part of the member benefits the Legislative Assembly receives in return for its membership dues includes travel reimbursement to attend events sponsored by the membership organizations. As a result, the reimbursement of hotel expenses by CSG is not a gift because the Legislative Assembly has provided fair market consideration in the form of membership dues.

In addition to the hotel expenses reimbursed by CSG, CAPE-Youth has offered to provide reimbursement for the remaining portion of the expenses—the airline tickets and ground transportation. It is less clear whether the reimbursement by CAPE-Youth for these expenses is a

gift. To the Commission’s knowledge, the Legislative Assembly does not pay membership dues to CAPE-Youth. While associated with CSG, CAPE-Youth is a consortium made up of additional partners and is funded by the federal government through the U.S. Department of Labor. At the same time, Representative Frelich will participate in a working group and provide a benefit to the organization with her participation. Without additional information on how much work is required of working group members, the Commission cannot determine if fair market consideration will be exchanged for the reimbursement by CAPE-Youth for airline tickets and ground transportation. However, as outlined below, because no lobbying will occur, Representative Frelich may accept the reimbursement provided by CAPE-Youth.

B. Lobbying will not occur at the CAPE-Youth working group.

In order for Article XIV’s gift prohibition to apply, CSG and/or CAPE-Youth must be considered lobbyists and engage in lobbying while providing a gift. In Advisory Opinion 23-02, the Commission explained when an organization provides “objective, educational material regarding pertinent topics,” the Commission compares those events to “continuing education, professional development, or vocational training” and the events “are unlikely to be considered lobbying.” N.D. Ethics Comm’n, Advisory Op. 23-02, 5 (2023).

The events sponsored by CSG and other membership organizations of the Legislative Assembly fit the objective, educational, and non-lobbying criteria articulated by the Commission in Advisory Opinion 23-02. These organizations provide education, training, and professional development to the Legislative Assembly and its staff from a research and objective approach. Lobbying does not occur when information is presented in this fashion. It appears the Legislative Assembly pays the membership dues and participates in these types of organizations for this reason.

In addition to events sponsored by the Legislative Assembly’s membership organizations, the CAPE-Youth working group similarly fits the research and objective approach. Along with being affiliated with CSG, CAPE-Youth is a consortium composed of research organizations in partnership with the federal government to provide funding. It appears the CAPE-Youth working group will provide education, training, and professional development without lobbying.

C. CSG and other membership organization travel is reported to the Legislative Assembly.

The Commission has learned that when legislators attend Legislative Assembly membership organization events, like CSG events, the Legislative Assembly requires the legislators to submit its report on out-of-state meeting form. When a legislator reports travel on the Legislative Assembly’s report on out-of-state meeting form, the legislator does not need to duplicate the reporting with the Commission. The travel disclosure rules provide an exception for this policy-monitored travel that is already reported to the Legislative Assembly. For purposes of transparency, members of the public may access policy-monitored travel reported to the Legislative Assembly with an open records request.

Due to the Legislative Assembly's new policy, it appears Representative Frelich must report the CAPE-Youth working group on the Legislative Assembly's report on out-of-state meeting form. However, if Representative Frelich is not required to submit the Legislative Assembly's report on out-of-state meeting form for the event, she must submit the Commission's travel disclosure form on the Commission's website within fifteen days following the conclusion of her travel.

IV. CONCLUSION

The Commission answers Representative Frelich's question as follows:

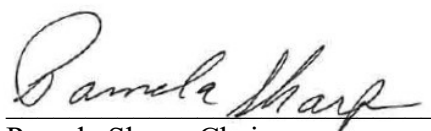
1. Yes, it is permissible to attend and receive travel reimbursement for the working group sponsored by CSG and CAPE-Youth.

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 Frelich for seeking advice regarding this issue.

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).

This advisory opinion was approved by the Commission at a regular meeting held on July 22, 2026.

Dated this 22nd day of July, 2026.



Pamela Sharp, Chair
North Dakota Ethics Commission