



Before the North Dakota Ethics Commission

Requested by:
Rhonda Kelsch, Executive
Director, North Dakota
Association of Soil
Conservation Districts

ADVISORY OPINION NO. 26-08

On May 8, 2026, the Ethics Commission (“Commission”) received an advisory opinion request from a lobbyist, Ms. Rhonda Kelsch, the executive director of the North Dakota Association of Soil Conservation Districts (“NDASCD”). 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. When an organization hosts an annual convention where attendees must pay to register, does inviting a legislator to attend the evening social and subsequent awards banquet at no charge comply with Article XIV of the North Dakota Constitution, N.D.C.C. chapter 54-66, and ethics rules?¹

I. FACTUAL BACKGROUND

In the request for an advisory opinion, Ms. Kelsch describes the event at issue. According to Ms. Kelsch, NDASCD hosts an annual multi-day event, inviting North Dakota producers and keynote speakers to present to convention attendees and educate them on topics significant to the state’s agricultural community. This event will take place December 1–3, 2026, at the same time legislators are in Bismarck for the organizational session prior to the start of legislative session. Registrants pay a registration fee that covers their attendance for both days, including the social and awards banquet. Additional tickets for the banquet are available for family members upon request.

The evening of the last day of the convention, NDASCD hosts both a social with appetizers and a cash bar as well as an annual awards banquet where the fifty-four soil conservation districts recognize their recipients of the “County Achievement” award, as well as recognize the North Dakota Leopold Award recipients. Attendees of the evening social and banquet are given narrative materials that describe the work of the County Achievement recipients, and they are also shown a video presenting information about the Leopold Award. In addition to the award activities, the NDASCD has presentations where children present on their summer service projects.

¹ The request for an advisory opinion inquired whether inviting legislators “to attend [] the evening social/banquet at no cost charge . . . would be a conflict of interest.” After reviewing the request, it became clear that the question presented instead directly invoked Article XIV’s lobbyist gift prohibition and the Commission’s gift rules.

Approximately 485 people attend the evening awards program. The question presented in the request relates to legislators attending the evening social and awards banquet at no charge.

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) N.D.C.C. ch. 54-66; and (3) ethics rules in N.D. Admin. Code ch. 115-03-01.

A. Article XIV of the North Dakota Constitution

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 purpose 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.”

B. North Dakota Century Code ch. 54-66

Following the constitutional directive, during the 2019 legislative session the Legislative Assembly created civil penalties for a violation of N.D. Const. art. XIV, § 2(1).² Under North Dakota Century Code § 54-66-03(3):

The commission may assess a civil penalty upon any individual who violates [the lobbyist gift contribution].

² Notably, N.D. Const. art. XIV, § 2(1) directed the Legislative Assembly to create “civil *and criminal* sanctions for violations” of the lobbyist gifting prohibition. (Emphasis added). No criminal penalty has been set. *See* N.D.C.C. ch. 54-66-13.

- a. If the gift has a value of five hundred dollars or more, the civil penalty may be up to two times the value of the gift.
- b. If the gift has a value of less than five hundred dollars, the civil penalty may be two times the value of the gift and may be up to one thousand dollars.

The civil penalty is reciprocal: If a lobbyist gives a prohibited gift to a public official and the public official accepts, both the lobbyist and the public official may be assessed a penalty. *See id.*; N.D. Admin. Code § 115-03-01-02(3).

C. 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. These rules provide exceptions to Article XIV’s lobbyist gift prohibition.

1. Definitions of Lobby and Lobbyist

The 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) (defining “lobby” by reference to the activities requiring registration under N.D.C.C. § 54-05.1-02 and defining “lobbyist” as an individual required to register) *with* N.D. Admin. Code § 115-03-01-01(4)–(5) (defining “lobby” to include attempts to otherwise influence public official actions or decisions and defining “lobbyist” by reference to that broader definition). The Commission exercised its constitutional authority when it expanded these definitions “to address attempts to otherwise influence public official action or decision” that occur outside the legislative process. N.D. Op. Atty. Gen. 2020-L-09, at 4–5. Whereas the statutory definitions focus on legislative lobbying. N.D.C.C. § 54-66-01(6)–(7).

The Commission’s rules expand “lobbying” to 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). A person who engages in the described conduct is considered a “lobbyist.” *Id.* Because organizations fall under the statutory definition of a “person,” they may also be considered lobbyists if they engage in activity that falls under the definition of “lobbying.” N.D.C.C. 1-01-49(17); N.D. Admin. Code § 115-03-01-01(5).

Certain persons are not considered a “lobbyist” under the statutes and ethics rules, regardless of their conduct. They 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) An individual who appears before a legislative committee for the sole purpose of presenting testimony on behalf of a trade or professional organization of 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.

N.D. Admin. Code § 115-03-01-01(5).

2. 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.

The rules define and set forth the criteria for private or public social and educational events which must be held in conjunction with exceptions five (5) and (6) outlined above.

A “public social and educational event” is:

any social and educational event that is held within the state and attendance is open to any state residents and others. The event must include an educational component and not be limited to a social event. The lobbyist required to register under North Dakota century code chapter 54-05.1, and public officials may not be the only state residents in attendance.

N.D. Admin. Code § 115-03-01-01(9).

Similarly, N.D. Admin. Code § 115-03-01-01(7) defines a “private social and educational event” with parallel requirements to a “public social and educational event,” but with attendance “by invitation to state residents and others who are members, employees, or affiliated with a sponsoring public or private organization, entity, or association.”

In Advisory Opinion 22-02, the Commission described the educational component of private and public social and education events. The Commission said, “An educational component of a private or public social and education event should serve to inform the public officials about a topic, issue, or problem and provide helpful and thorough review of the topic, issue, or problem based upon the unique knowledge, skills, or research from the lobbyist.” N.D. Ethics Comm’n Advisory Op. 22-02, at 5.

As a best practice, some examples of educational components include:

- (1) A presentation outlining and analyzing the topic, issue, or problem;
- (2) A panelist presentation outlining and analyzing the topic, issue, or problem followed with a question-and-answer session;
- (3) A workshop demonstrating and working through a topic, issue, or problem where attendees participate in hands-on activities;
- (4) Roundtable discussions on the topic, issue, or problem led by an expert; or
- (5) Exhibits with individualized presentations and informational material handouts on the topic, issue, or problem.

N.D. Ethics Comm'n Advisory Op. 24-02, at 6.

Before holding a private or public social and educational event, the sponsor must file an event notice with the Commission under N.D. Admin. Code § 115-03-01-04. The rule states:

- (1) Prior to a public or private social and educational event, the sponsor shall file notice with the ethics commission providing details regarding the planned event. Notice does not constitute approval of the event by the ethics commission. If the sponsor is concerned with compliance with North Dakota law and these rules, the sponsor may request an advisory opinion from the ethics commission.
- (2) No specific format of notice is required; however, it should include the event date, place, sponsor, educational purpose, estimated attendance, and estimated cost per attendee.

Id.

The notice form is submitted electronically on the Commission's website.

III. ETHICS ANALYSIS

To determine whether it is permissible for legislators to attend NDASCD's combined social and awards banquet at no charge, the Commission must answer the following: (1) whether the organization sponsoring the event is a lobbyist; (2) if it is a lobbyist, if covering the cost of an evening social and banquet is a lobbyist gift; and (3) if it is a gift, if a gift prohibition exception applies.

A. NDASCD is a Lobbyist Under the Gift Rules

In Advisory Opinion 25-05, the Commission described how and when a person becomes a lobbyist and when that status does not apply. The Commission must apply that analysis in the context of the request from NDASCD. 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 the purposes of 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 definitions 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 to the 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).

As stated above, an organization can be a lobbyist under the gift rules if it engages in lobbying activity. N.D. Admin. Code § 115-03-01-01(5). Accordingly, NDASCD could be a lobbyist if the events in the request qualify as lobbying activities.

Lobbying under the gift rules encompasses a broad array of activities that all have a similar goal in their attempt to influence decisions and actions of public officials. N.D. Admin. Code § 115-03-01-01(4). The NDASCD presently commits itself “to advocate for natural resource conservation, provide education and outreach, and strengthen partnerships that protect North Dakota’s land water, and wildlife.” N.D. Ass’n of Soil Conservation Dist., *About*, <https://www.ndascd.com/about> (last visited July 31, 2026). Its dedication to local conservation efforts and appeals to legislators during the legislative session support the conclusion that this organization participates in lobbying activities on behalf of its constituents.

An important caveat to the gift rules is that, while meeting the definition of “lobbyist,” it must also be true that the lobbying activity is taking place currently or proximately to the time a lobbyist is lobbying a public official. N.D. Ethics Comm’n Advisory Op. 25-05, 7 (2025). The request for this advisory opinion involves two opportunities where lobbying may occur: the social and the awards banquet. Both are set to take place the same night, with the social immediately preceding the awards banquet. By extending an invitation to legislators to attend these events and offering to cover the costs for which attendees would otherwise be responsible, NDASCD creates an opportunity for it to lobby those public officials.

It is of additional importance that the timing of this event aligns with the organizational session that takes place prior to the start of the 2027 legislative session. As the request states, “Our convention this year overlaps with the Legislative members coming into Bismarck for their committee reorganization and work through December 1st through 3rd, 2026.” The immediate access to legislators at the events and its concurrency with the organizational session offer a sound indication that NDASCD will likely lobby.

Considering NDASCD’s status as a lobbyist and the anticipated lobbying activity that will take place at the event, the NDASCD is considered a lobbyist under the gift rules. The next step requires discerning whether covering the cost of a legislator’s attendance at the social and awards banquet is considered a gift.

B. Providing a Thing of Value to a Legislator is a Gift

NDASCD's request for an advisory opinion centered on the question of whether inviting legislators to their evening social and awards banquet "at a no cost charge" would present a conflict of interest; however, the proper analysis is to apply the gift rules rather than the conflict of interest rules to this prospective event.

Gifting items of value to a public official is prohibited by Article XIV, Section 2, of the North Dakota Constitution. Under Article XIV, food and beverages at an event are things of value and qualify as "gifts" prohibited by the North Dakota Constitution. The registration fee that applies to attendees of the NDASCD event in question presumably goes towards the food and beverages they would not be purchasing themselves. In this context, since there will be food and beverages available to attendees of the social and awards banquet, the Commission will need to consider whether an exception applies that would permit NDASCD to gift these items to legislators. Of note, the exceptions in the Commission's gift rules are only applicable to events held within the State of North Dakota. N.D. Const. art. XIV § 2(1) ("'[G]ift' 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." (emphasis added)).

C. An Exception to Article XIV's Gift Prohibition Applies

The Commission's rules in section 115-03-01-03(7), N.D. Admin. Code, specifically except "[f]ood and beverage served for immediate consumption at any private or public social and educational event" from the gift prohibition.

According to both the request and supplementary information provided to the Commission, NDASCD's social and awards banquet, as a combined event, appears to be a public social and educational event under the exceptions in the gift rules. In general, it must be true that attendees are provided with materials about a topic, issue or problem, and are offered a helpful and thorough review of the materials based upon the unique knowledge, skills, or research from the NDASCD. N.D. Ethics Comm'n Advisory Op. 22-02, at 5. According to information provided by Ms. Kelsch, the event will have educational elements in the form of narrative materials about the county achievement winners, youth presentations, and a North Dakota Leopold Award presentation. Additionally, the event is open to the public, takes place within the State of North Dakota, and includes participants who are non-lobbyists and non-public officials. N.D. Admin. Code § 115-03-01-01(8).

Based upon information provided, the event is a public and social educational event and the exception in section 115-03-01-03(7) applies. Therefore, based on these facts, it is permissible for NDASCD to provide food and beverage for immediate consumption.

NDASCD must file an event notice form with the Commission prior to the event taking place. The Commission requests event sponsors submit these notices preferably no less than a week in advance.

IV. CONCLUSION

The Commission answers Ms. Kelsch's question as follows:

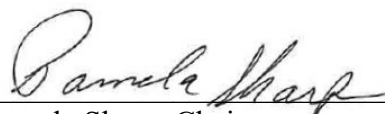
1. The NDASCD may provide legislators with food and beverages for immediate consumption at its annual convention's social and awards banquet.

In accordance with N.D.C.C. § 54-66-04.2, the Commission will publish this advisory opinion on its website. The Commission thanks Ms. Kelsch 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 special meeting held on August 12, 2026.

Dated this 12th day of August, 2026.



Pamela Sharp, Chair
North Dakota Ethics Commission