



Before the North Dakota Ethics Commission

Requested by:
Mr. Jame Todd
o/b/o Bartlett & West

ADVISORY OPINION NO. 26-02

On February 12, 2026, the Ethics Commission (“Commission”) received an advisory opinion request from Mr. Jame Todd, on behalf of Bartlett & West, an engineering company. 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. Bartlett & West seeks guidance regarding client appreciation events it hosts a couple of times per year. The questions presented to the Commission are summarized below:

1. Does providing food and/or an activity such as axe throwing or simulator golf to clients, including Board members who are elected officials, violate any ethical standards or regulations within North Dakota?
2. Are there any restrictions or guidelines we should follow to ensure compliance with the state’s ethics laws?

I. FACTUAL BACKGROUND

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

A couple of times a year we like to host a client appreciation event that may include providing food and offering an activity such as axe throwing or simulator golf. The purpose of these events is to show our appreciation to our clients for their partnership and to foster positive professional relationships.

Some of our clients have Board members who are also elected officials. We are committed to conducting our business in accordance with all applicable ethical standards and regulations.

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. These rules provide exceptions to Article XIV’s lobbyist gift prohibition. The rules also define when someone is considered a lobbyist for purposes of the lobbyist gift prohibition. N.D. Admin. Code § 115-03-01-01(4)-(5); N.D. Op. Att’y. Gen. 2020-L-09, at 1, 6.

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) *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 § 115-03-01-01(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) 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.

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 further 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 six (6) outlined above. Additionally, the sponsor of a private or public social and educational event must file a notice form through the Commission's website prior to hosting the event. N.D. Admin. Code § 115-03-01-04.

III. ETHICS ANALYSIS

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 Bartlett & West. 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 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).

A. Public Officials Attend Events in Different Capacities

As noted above, the Commission looks to whether lobbying activity is occurring during an event or proximate in time to determine if someone is acting as a lobbyist. *Id.* For lobbying activity to occur, the event must have attendees who are public officials that can be lobbied. However, not all events will have public officials attending in their capacity as public officials at the state level.

The Commission recognizes that while public officials serve the state, they also serve their local communities in other ways and wear different “hats.” This includes serving on boards of political subdivisions and private organizations that are not under the Commission’s jurisdiction and outside the scope of Article XIV. The fact that Bartlett & West invites clients that “have Board members who are also elected officials” does not necessarily make it a lobbyist for purposes of the events described in the request.

If public officials serve on boards of political subdivisions or private organizations and solely attend in those capacities, Bartlett & West would not be considered a lobbyist for the purpose of Article XIV’s gift prohibition. In that scenario, there is no limitation on what Bartlett & West may provide attendees in Article XIV or the Commission’s rules.

B. A Client Appreciation Event for State Clients is Lobbying Activity

However, when public officials are invited and attend the events as clients due to their service at the state level, lobbying activity occurs. In general, client appreciation events are designed to strengthen loyalty between the business and the client. By hosting these events, the business reinforces the client’s decision to choose the business over competitors. This influence can be both explicit and implied by the atmosphere and the hospitality of the event, as social cues implicitly encourage the client to return for future business.

Here, the Commission does not have details of the conversations that occur at the events held by Bartlett & West. However, by recognizing client appreciation events can both implicitly and explicitly encourage future business, the Commission concludes the events are designed to influence action or decision. When public officials attend in their capacity as state public officials, lobbying occurs because the events are designed to “influence public official action or decision.” N.D. Admin. Code § 115-03-01-01(4). Therefore, when state public officials attend the events in their capacity as state public officials, Bartlett & West is considered a lobbyist under the Commission’s rules for purposes of the events. N.D. Admin. Code § 115-03-01-01(5) (defining “lobbyist” as “a person who engages in activity that falls within the definition of the term ‘lobby’”).

C. Providing Things of Value to State Public Officials

Article XIV prohibits a lobbyist from providing a state public official with a gift. A “gift” is “any item, service, or thing of value not given in exchange for fair market consideration, including gifts of travel *or recreation*.” N.D. Const. art. XIV, § 2(1) (emphasis added). While the Commission can make certain exceptions to this baseline prohibition, it has not made exceptions for recreational activities. *See* N.D. Admin. Code § 115-03-01-03. Therefore, when state public officials attend the events in their capacity as state public officials, Article XIV prohibits Bartlett & West from providing recreational activities, such as axe throwing and a golf simulator.¹

As detailed above, the Commission has made exceptions to provide immediately consumable food and beverage at events. Bartlett & West may provide food and beverages at events where lobbying activity occurs with state public officials if:

- (1) the food and beverages are for immediate consumption;
- (2) the event has an educational component;
- (3) at least one attendee is not a lobbyist or a public official; and

¹ The recreational activities may also be an “attempt to influence award” under the Office of Management and Budget’s procurement rules. N.D. Admin. Code § 4-12-04-05. Attempt to influence awards are also considered a prohibited lobbyist gift under N.D. Const. art. XIV, § 2(1) and N.D. Admin. Code ch. 115-03-01 and shall not be accepted by state level public officials. Further, the nominal value exception in N.D. Admin. Code § 4-12-04-05(2) for attempt to influence awards does not apply for public officials under the Commission’s jurisdiction. N.D. Const. art. XIV, § 2(1); N.D. Admin. Code § 115-03-01-02(1). Therefore, attempt to influence awards of any value shall not be provided by a lobbyist or accepted by a public official unless an exception to Article XIV’s lobbyist gift prohibition applies.

- (4) the Commission's meeting notice form is filed prior to the event starting.

N.D. Admin. Code §§ 115-03-01-01(7), (9), 115-03-01-03, 115-03-01-04.

IV. CONCLUSION

The Commission answers Bartlett & West's questions as follows:

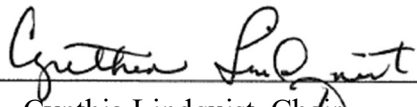
1. Article XIV and the Commission's rules do not limit what a sponsor may provide public officials who attend an event in a capacity apart from the public officials' service to the state.
2. A sponsor of a client appreciation event may not provide recreational activities, such as axe throwing and a golf simulator, when state public officials attend in their capacity as state public officials.
3. A sponsor of a client appreciation event may provide immediately consumable food and beverages when state public officials attend in their capacity as state public officials. The event must have an educational component, an attendee who is not a lobbyist or public official, and a filed meeting notice form with the Commission.

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 Bartlett & West and Mr. Todd for seeking advice regarding this issue.

This advisory opinion was approved by the Commission at a regular meeting held on April 24, 2026. Commissioner Jared Huibregtse declared a potential conflict of interest and recused from this advisory opinion pursuant to N.D. Admin. Code § 115-04-01-02.

Dated this 24th day of April, 2026.



Cynthia Lindquist, Chair
North Dakota Ethics Commission