

Before the North Dakota Ethics Commission

Requested by:
Melissa Hauer, General
Counsel & VP of Advocacy,
North Dakota Hospital
Association

ADVISORY OPINION NO. 26-09

On July 7, 2026, the Ethics Commission (“Commission”) received an advisory opinion request from a lobbyist, Ms. Melissa Hauer, General Counsel and VP of Advocacy for the North Dakota Hospital Association (“NDHA”). 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 is summarized below:

1. Is it permissible to award personalized plaques to legislators after a social and educational event has concluded?

I. FACTUAL BACKGROUND

In the request for an advisory opinion, Ms. Hauer describes the event at issue. According to Ms. Hauer, NDHA held its 91st annual convention on October 22, 2025. She described this event as a public social and educational event. The request for the advisory opinion provided more details about the event:

Participants pay a fee to attend the NDHA annual convention. Senior level hospital staff make up the majority of attendees but public health workers, University System staff, other types of health care professionals, and organizations that provide services to health care providers also attend. The total number of attendees was just over 100. There were five registered lobbyists that attended. There were two public officials that attended an awards ceremony that was part of the event. The annual convention is structured to provide education and social opportunities to attendees. NDHA does not engage in lobbying at the event, nor is any part of the event designed to elicit lobbying of public officials by attendees.

Before the event, NDHA chose seven state legislators for their exceptional advocacy for the betterment of health care in North Dakota. Each legislator chosen was to be given an award consisting of a color imprinted resin column personalized with the recipient’s name, NDHA logo, award name, and year. The award was intended for each individual recipient, is unique to the recipient, and should not

have an independent resale value due to the personalization of and the materials (resin) used to make the award.

NDHA invited all seven state legislators to receive their award in person by attending the educational session and awards ceremony portion of the event. All attendees registered for the event as well as the legislators were offered a buffet style lunch. The lunch consisted of food and beverage for immediate consumption. Two of the seven legislators were able to attend. No legislators partook in the lunch. After an educational portion that updated attendees on various issues affecting hospitals and health systems, NDHA presented the awards to the two legislators in attendance. NDHA filed the required notice with the North Dakota Ethics Commission in advance of the awards ceremony.

NDHA has a tradition of presenting nonmonetary awards at its annual convention. For example, NDHA has recognized various legislators and the Governor for outstanding advocacy in health care and recognized the recipient of the American Hospital Association Grassroots Champion Award. At the convention, an organ procurement organization also annually recognizes community health care champions for organ donation through its Hospital Partner of the Year and Donation Partner of the Year awards.

Based on N.D. Administrative Code and Advisory Opinion 24-02, the event lunch and personalized award given to legislators was regarded as permissible as food and beverage served for immediate consumption and as a gift or other thing of value shared as a cultural or social norm as part of a public or private social and educational event under N.D. Admin. Code § 115-03-01-03(6) and (7). NDHA seeks an advisory opinion that mailing or hand delivering the remaining personalized awards to the five legislators who were not able to attend the annual convention is also permissible and will be viewed as part of the event and that a later delivery merely completes the intended presentation to an absent recipient, so the award remains “part of” the event. In other words, the question is whether delivery after the event to an absent legislator remains “as part of” the qualifying social and educational event and thus in compliance with gift laws and rules?

The meeting notice form referenced in the advisory opinion request included additional insights into the event. It stated, “The [NDHA] will provide education to attendees at a session on October 22, 2025, regarding the 340B Drug Pricing Program, health insurance prior authorization, behavioral health services, the North Dakota medical assistance program, and health care worker assault penalty.” *Meeting Notice from Mr. Tim Blasl*, N.D. Ethics Comm’n (Oct. 22, 2025), https://www.ethicscommission.nd.gov/webform/meeting_notice/submissions/867.

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 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, 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. These 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." 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 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 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.

A “private social and educational event” is:

Any social and educational event that is held within the state and attendance is by invitation to state residents and others who are members, employees, or affiliated with a sponsoring public or private organization, entity, or association. 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(7).

Similarly, N.D. Admin. Code § 115-03-01-01(9) defines a “public social and educational event” with parallel requirements to a “private social and educational event,” but with attendance “open to any state residents and others.”

In advisory opinion 22-02, the Commission described the educational component of private and public social and educational events. The Commission said, “[a]n educational component of a private or public social and educational 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.

In Advisory Opinion 24-02, the Commission stated some examples of educational components to 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.

The Commission’s gift rules provide an exception for, “[g]ifts or other things of value shared as a cultural or social norm as part of a public or private social and educational event.” N.D. Admin. Code § 115-03-01-03(6). In Advisory Opinion 24-02, the Commission provided an analysis of this exception. The Commission explained:

A gift or thing of value provided as part of a cultural norm must reflect the traditions, heritage, values, and beliefs of a group of people. Most of the items falling under this exception have a storied past and are rooted in tradition. Examples include star quilts from members of tribal nations or gifts between political dignitaries.

A gift or thing of value provided as part of a social norm must be intended for an individual recipient and unique to the person, much like a personalized plaque or certificate with the recipient’s name. Items falling under this exception should not derive independent resale value. In other words, while a monetary cost may be required to obtain the award, the award should have mostly sentimental rather than intrinsic value. A personalized acrylic plaque fits this exception. A few examples of items not fitting this exception include a bottle of wine at a liquor distributor event, a rifle in recognition of a public official’s service by a hunting organization, tickets to a sporting event, or other awarded items which have independent resale value.

Id. at 7.

Prior to 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.

3. Lobbyist Status is Activity Based

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 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 purposes 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).

III. ETHICS ANALYSIS

As explained below, for NDHA to present award plaques to legislators without ethical liability, one of the exceptions to the lobbyist gift prohibition must apply. The event in question has already concluded with notice given to the Commission on October 22, 2025. As noted above, for an event to be a private¹ social and educational event, it must occur in the State of North Dakota, include participants who are non-lobbyists and non-public officials, and include an educational component.

The facts presented in the advisory request and the event notice confirm the event occurred in the State of North Dakota and was open to many individuals, including non-lobbyists and non-public officials, such as hospital staff and health care professionals. Relying on the information presented in the meeting notice form, the topics discussed at the event included, "the 340B Drug Pricing Program, health insurance prior authorization, behavioral health services, the North Dakota medical assistance program, and health care worker assault penalty." *Meeting Notice from Mr. Tim Blasl*, N.D. Ethics Comm'n (Oct. 22, 2025), https://www.ethicscommission.nd.gov/webform/meeting_notice/submissions/867.

An educational component should serve to inform the attendees about relevant topics that are helpful to the attendees involving thorough review based upon the unique knowledge, skills, or research from NDHA. The topics NDHA described fit under this category because of the knowledge and skill NDHA possesses.

¹ The advisory request opinion classified the convention as a "public" social and educational event; however, it appears the event is a "private" social and educational event because individuals were invited to attend rather than the event being open to the public at large. This distinction is immaterial to the Commission's review, because, in either scenario, the event must occur in the State of North Dakota, include participants who are non-lobbyists and non-public officials, and include an educational component. N.D. Admin. Code § 115-03-01-01(7).

Because of the nature of the event NDHA hosted, it was a private social and educational event. The Commission will analyze whether NDHA can give an awards plaque to an invited legislator after the conclusion of the event.

A. The Plaque is Considered a Gift

Each plaque that was provided to a public official at the event is considered a gift under Article XIV because it is an item of value that was not given in exchange for fair market consideration. Even though it is a customized plaque, it still holds some monetary value. Therefore, the plaque is an Article XIV gift. The Commission must next analyze whether NDHA is a lobbyist.

B. NDHA is a Lobbyist Under the Gift Rule

As stated above, an organization can be a lobbyist under the gift rules if it engages in “current or proximate” lobbying activity. N.D. Admin. Code § 115-03-01-01(5); N.D. Ethics Comm’n Advisory Op. 25-05, 7 (2025). Lobbying under the gift rules encompasses a broad range of activities that all have a similar goal in their attempt to influence decisions and actions of public officials. NDHA hosted a private social and educational event where legislators and other public officials attended. NDHA states it provided the personalized plaques to the legislators in recognition of “exceptional advocacy for the betterment of health care in North Dakota.”

However, the plaques do serve another implicit purpose. By awarding the plaque, NDHA shows support of a legislator’s policy stances and influences and encourages legislators to similarly support the issues NDHA cares about in the future. Therefore, NDHA engaged in lobbying at the convention by awarding plaques to the legislators as a means of attempting to influence the legislators’ decisions on issues relevant to NDHA. The Commission will next analyze whether the gifting of these personalized plaques falls under an exception to Article XIV’s lobbyist gift prohibition.

C. Plaques as a Social Norm at the NDHA Annual Convention

As noted above, the Commission’s gift rules provide an exception for “[g]ifts or other things of value shared as a cultural or social norm as part of a public or private social and educational event.” N.D. Admin. Code § 115-03-01-03(6). For a gift or thing of value to be part of a social norm, it must be “intended for an individual recipient and unique to the person” and “should not derive independent resale value,” such as a personalized plaque which has mostly sentimental rather than intrinsic value. N.D. Ethics Comm’n Advisory Op. 24-02, 7 (2025).

Here, these plaques are intended for the individual legislators and are unique to them by including each legislator’s name, award, and the year. These plaques do not derive independent resale value and have more sentimental than intrinsic value due to the personalized nature with the recipient’s name inscribed. Therefore, the plaques provided to legislators at the private social and educational event fit the exception outlined in the lobbyist gift rules and explained in Advisory Opinion 24-02. The Commission must determine whether mailing or hand delivering the remaining

personalized plaques to the legislators absent from the event remains “part of” the private social and educational event.

D. Awarding the Plaque After the Social and Educational Event

It is common practice to mail personalized awards to attendees who do not attend events where the sponsor would have presented the award. NDHA prepared these plaques prior to the event and intended to present them to the legislators at the event. Because of NDHA’s intent to give these plaques to all invited legislators during the private social and educational event, delivery of these plaques after the conclusion of the event remains “part of” the private social and educational event. It completes the event by ensuring the awards presented make it to the recipient. Therefore, by mailing or hand delivering the plaques to the absent legislators, the delivery remains part of the private social and educational event and is acceptable.

IV. CONCLUSION

The Commission answers Ms. Hauer’s question as follows:

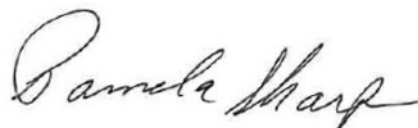
1. Yes, mailing or hand delivering a personalized plaque to legislators is permissible when they did not attend a private social and educational event where NDHA would have presented the plaque. The delivery of the plaque fits the exception for providing gifts or other things of value shared as a “social norm as part of a public or private social and educational event.”

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 Ms. Hauer for seeking advice regarding this issue.

This advisory opinion was approved by the Commission at a regular meeting held on September 30, 2026.

Dated this 30th day of September, 2026.



Pamela Sharp, Chair
North Dakota Ethics Commission