



Before the North Dakota Ethics Commission

Requested by:
State Auditor Joshua Gallion

ADVISORY OPINION NO. 26-10

On July 15, 2026, the Ethics Commission (“Commission”) received an advisory opinion request from State Auditor Joshua Gallion. 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. Under N.D. Const. art. XIV’s gift prohibition and the Commission’s rules, is it permissible for a public official to accept a scholarship from the State Financial Officer’s Foundation (“SFOF”) that covers travel expenses (i.e., airfare, lodging, and registration) to attend an out-of-state conference hosted by SFOF?¹

I. FACTUAL BACKGROUND

In the request for an advisory opinion, State Auditor Gallion provides information for the event hosted by the SFOF. According to a communication sent to him from SFOF Director of Operations, Adam Slayton, SFOF will be hosting its 2026 Fall National Conference at the Westin Philadelphia, in Philadelphia, Pennsylvania. This is a multi-day conference from November 16 to November 19.

In addition, SFOF shared it will provide a scholarship for “one State Financial Officer and one staff member per office” that will cover a three-night hotel stay and an economy flight, with no upgrades, to and from the conference. The communication to State Auditor Gallion is unclear whether attendance at the conference is also covered by this scholarship. However, a registration link was included, and upon further review, there is a fee schedule for individuals who wish to attend the conference. The fee schedule showed that state financial officers and one staff member from their office may register at no cost. Other attendees must pay to register for the conference, including spouses, additional staff members, and non-sponsor attendees. Each registrant has a unique fee, ranging from zero dollars to \$3,050.00.

¹ The invitation to the SFOF Fall National Meeting included information for an opportunity to tour the United States Mint “on Thursday, November 19, following the conference.” This tour does not appear to be part of the conference, and tours of the facility are free to the general public. Accordingly, the invitation to tour the U.S. Mint will not be evaluated in this advisory opinion.

II. LEGAL BACKGROUND

A. Article XIV and the Ethics Commission's Rules

Section 2 of Article XIV of the North Dakota Constitution provides the baseline 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, a “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).

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 54-66-03, N.D.C.C., codifies the gift provision of Article XIV and outlines civil penalties for violations of the section. In 2020, the Commission adopted rules related to gifts by lobbyists. 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:

- a. A legislator;
- b. A private citizen appearing on the citizen's own behalf;
- c. 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;
- d. [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
- e. 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.

The general rule is that lobbyists may not knowingly give, offer, solicit, initiate, or facilitate a gift to a public official in conjunction with any effort by the lobbyist to lobby that public official. N.D. Admin. Code § 115-03-01-02(1). This rule applies reciprocally to public officials, who may not knowingly accept a gift from a lobbyist offered in conjunction with the lobbyist's efforts to lobby the public official. *Id.*

However, there are several exceptions to this lobbying rule. *Id.* These exceptions apply to private social and educational events, public social and educational events, and informal social and educational events held within the state of North Dakota. N.D. Admin. Code § 115-03-01-03(5).

Article XIV’s gift prohibition enables the Commission to make exceptions for lobbyist gifting for in-state events only. *See* 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)). Therefore, the Commission cannot make exceptions to Article XIV’s lobbyist gift prohibition for out-of-state events. *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 tha[t] 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[s] 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.A.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. Travel Expenses and Fair Market Consideration

In Amended Advisory Opinion 25-02, the Commission clarified “travel expenses are unquestionably gifts unless given in exchange for fair market consideration.” N.D. Ethics Comm’n, Amended Advisory Op. 25-02, 8 (2025). In that opinion, the Commission determined when fair market consideration is exchanged by the public official working at an event, payment of travel expenses is not a gift. *Id.* Specifically, the Commission analyzed when it is permissible for a public official to accept travel expenses when serving as a presenter or panelist for the event sponsor. *Id.* The Commission determined no gift occurs when a public official is working at an event and the travel expenses “are roughly equal in market value to [the public official’s] speaking services.” *Id.*

D. The Ethics Commission’s Travel Disclosure Rules

Under N.D. Admin. Code § 115-06-01, when a public official is traveling within the public official's official capacity, and that travel is not reported anywhere else, the public official must disclose it. The Commission assigned the term "third-party-funded travel" to this type of travel, which 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).

Public officials must report to the Commission any third-party-funded travel within fifteen days after the trip concludes. 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.

III. ETHICS ANALYSIS

To determine whether State Auditor Gallion may attend the SFOF conference at no cost, the Commission must answer the following: (1) whether covering the costs associated with the event is considered a "gift"; and (2) if it is a gift, whether SFOF is a lobbyist for the purposes of Article XIV's gift prohibition.

A. Providing Things of Value to a Public Official

Statewide officials can register for SFOF's conference at no cost. While registration for the event is available to a variety of different individuals, the price per attendee can be up to \$3,050. The Commission is not aware whether statewide officials pay membership dues to SFOF, and there was no indication in his request for this advisory opinion that State Auditor Gallion will be presenting or participating in a panel at the conference. Accordingly, absent facts that show fair market consideration given in exchange for free registration, covering the cost of registration for public officials is a gift. N.D. Const. art. XIV, § 2(1).

Additionally, SFOF is offering a scholarship for each state financial officer and one staff member from the official's office and covers a three-night hotel stay and economy flights to and from the

conference. State Auditor Gallion has not been asked to present at the SFOF conference or otherwise work for the event. He has also not been asked to provide anything, other than his attendance, in exchange for the payment of his expenses. Therefore, travel and lodging provided by SFOF are gifts, as they are things of value not given in exchange for fair market value. *Id.*

B. SFOF 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 State Auditor Gallion.

An organization qualifies as a lobbyist under the gift rules if it engages in current or proximate lobbying activity when the event takes place. N.D. Admin. Code § 115-03-01-01(5); N.D. Ethics Comm’n Advisory Op. 25-05, 7 (2025) (explaining that while a person or organization may register as a lobbyist, registration is not dispositive of lobbying activity under the Commission’s lobbyist gift rules). As outlined above, lobbying under the definition in the lobbyist gift rules encompasses a broad array of activities that all have a similar goal—influencing the decisions and actions of public officials. N.D. Admin. Code § 115-03-01-01(4).

Here, SFOF is a national “nonpartisan, voluntary membership organization of state financial officers.” State Fin. Officers Found. Action, *SFOF Action*, <https://sfofaction.org/> (last visited Aug. 5, 2026). Its “mission is to drive fiscally sound public policy, by partnering with key stakeholders, and educating Americans on the role of responsible financial management in a free market economy.” State Fin. Officers Found., *About*, <https://sfof.com/about/> (last visited Aug. 8, 2026). At both its annual national conferences, SFOF strives to encourage elected officials to “become better public servants by sharing best practices and hosting honest discussions with the financial industry and political leaders.” *Id.* Moreover, SFOF states “[it] continues to organize a select group of leaders from the public and private sectors to help state financial officers develop and implement free-market, pro-growth policies.” *Id.* Based on these descriptors, the activities associated with SFOF appear educational in nature.

However, SFOF’s dedication to addressing waste, fraud, and financial abuse through collaboration between state officials and industry representatives demonstrates that SFOF may participate in lobbying activities. Additionally, its issuance and publication of subjective “Comment Letters” further demonstrates it may engage in lobbying.² At minimum, SFOF’s approach requires the Commission to analyze the five factors outlined above for events that “present information from a particular perspective and are consequently more subjective.” N.D. Ethics Comm’n Advisory Op. 25-02, 6 (2025). Each factor is addressed in turn below.

² The Commission notes SFOF Action is the “advocacy partner” of the main foundation, SFOF. State Fin. Officer Found. Action, *SFOF Action*, <https://sfofaction.org/> (last visited Sept. 14, 2026). SFOF Action is presented as the main lobbying arm of SFOF, but, despite this apparent separation, it is not dispositive that SFOF also does not engage in lobbying under the definition for the lobbyist gift prohibition. SFOF continues to take a subjective stance on policy issues, reflected in its publication of “Comment Letters” to government entities and policymakers as well as the programs it publishes on its website.

1. Overarching Objectives of the Event Sponsor(s)

While SFOF hosts the event and sponsors the scholarship for public officials to attend, SFOF also has “donor partners” that monetarily assist the organization. SFOF does not disclose these “donor partners” and intentionally keeps this information private. State Fin. Officers Found., *Sponsors: Empowerment Through Connection*, <https://sfof.com/donor-partners/> (last visited Sep. 24, 2026). The information SFOF does provide shows SFOF’s overarching objectives at its events are to provide an opportunity for corporate and government leaders to interact and produce policy outcomes. The website states: “Our corporate sponsors and state government leaders work together to provide the best possible free-market solutions for the states. At our national meetings, corporate partners sit and participate side-by-side with our state leaders. SFOF does not discuss or disclose our donors or sponsors.” *Id.*

Shielding donor information and providing opportunities for undisclosed donors to interact directly with public officials demonstrates an opportunity for lobbying occurs at SFOF events. This factor weighs in favor of SFOF being a lobbyist.

2. Topics of Presentations, Panel Discussions, or Social Occasions

The Commission was not provided with a schedule of the events planned for the SFOF conference, nor is there any information publicly available online. However, schedules from previous conferences vary in specificity of what the itineraries were at SFOF events. The schedule from 2024 is the most transparent one the Commission found and discloses what was discussed and who was invited as keynote speakers. State Fin. Officers Found., *2024 National Meeting: Anchorage, Alaska—Official Program* (2024), https://sfof.com/wp-content/uploads/2024/09/SFOF-AK_NationalMeetingProgramWEB.pdf. Panel discussions focused on topics like the ESG (environmental, social, and governance) framework, politicized banking, and preventing foreign influence within states. Some of the keynote speakers were Dr. Ben Carson, James Danly, and Jonathan Berry. *Id.* In light of these details, it is likely that other conferences hosted by SFOF have a similar subjective perspective on the topics the organization chooses to focus on.

Also relevant to the Commission’s inquiry is that SFOF events included multiple “invite only” events within the events. While it is unclear what was discussed during these more exclusive affairs, the 2024 schedule shared two meetings that were invite only: the “State Staff Meeting” and the “State Policy Discussion.” *Id.* The latter states “[a]ll non-state official attendees will be asked to leave the ballroom during this time.” *Id.* The lack of transparency is not helpful, but a reasonable presumption can be made from the title alone that exclusionary discussions will occur regarding policy. This factor also weighs in favor of SFOF being a lobbyist by including this type of material in the event’s programming.

3. Scope and Type of Invitees to the Event

Materials available to the Commission included the registration link for interested parties who want to attend the conference. Individuals invited to register include, but are not limited to,

statewide officials, state government staffers, SFOF board members and staff, event sponsors, and Public Fiduciary Network members.³

Alone, this factor is not noteworthy. However, it must be considered within the context of SFOF intentionally concealing its corporate sponsors and subsequently bringing those sponsors and public officials together to “provide the best possible free-market solutions.” State Fin. Officers Found., *Sponsors: Empowerment Through Connection*, <https://sfof.com/donor-partners/> (last visited Sep. 25, 2026). It appears SFOF created an invite list so lobbying may occur at its events. Therefore, this factor also weighs in favor of SFOF being a lobbyist.

4. Materials Provided to a Public Official Before, During, and After the Out-of-State Event

The Commission does not have access to the materials that SFOF will provide to public officials attending the conference. The materials may consist of the typical handouts that individuals receive at events of a similar nature. However, whether these materials are objective or provide a more subjective perspective is also unknown to the Commission.

This factor cannot be determined by the current information available to the Commission but is not necessary for the Commission to reach a conclusion for this advisory opinion.

5. Communications Received by a Public Official Before, During, and After the Out-of-State Event from the Event Sponsor or Other Invitees

The Commission does not have access to the list of event sponsors and was not provided with any materials they plan to share with public officials attending the SFOF conference. However, the information available on SFOF’s website that its “corporate sponsors and state government leaders work together to provide the best possible free-market solutions for the states” indicates the corporate sponsors will propose policy to the public officials during the event. Therefore, the Commission can conclude this factor also weighs in favor of SFOF being a lobbyist by facilitating these discussions.

On balance, the five factors demonstrate SFOF will act as a lobbyist at the event. Therefore, Article XIV of the North Dakota Constitution prohibits acceptance by a public official of the travel and lodging scholarship offered by SFOF as well as the no cost registration because they are lobbyist gifts.

However, it is permissible for State Auditor Gallion to pay the full amount for the travel, lodging, and registration costs himself. If a public official decides to attend an out-of-state event, and pays the applicable costs to do so, the public official must still be cognizant of other attempts by

³ The Public Fiduciary Network (“PFN”) is a network affiliated with SFOF and promises to “recruit, organize, educate, and serve as a resource for the thousands of public fiduciaries who manage and oversee public funds.” Pub. Fiduciary Network, <https://publicfiduciary.net/> (last visited Sept. 25, 2026). PFN’s website also highlights the benefits of being associated with SFOF because its “credibility and relationships with key decision-makers who oversee state pension funds is second to none,” indicating SFOF is widely connected in the government finance sphere of influence. *Id.*

lobbyists to provide unauthorized gifts. Additional lobbying opportunities may occur at separate events held at a conference, such as “free” dinners, socials, or tours, and a public official will need to self-evaluate “to determine whether there is an attempt to influence official action or decision” if these distinct events are being gifted to the public official. “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. [Admin. Code] § 115-03-01-02.” N.D. Ethics Comm’n Advisory Op. 25-03, 6 (2025).

IV. CONCLUSION

The Commission answers State Auditor Gallion’s question as follows:

1. Article XIV and the Commission’s rules prohibit a public official from accepting a travel and lodging scholarship as well as free registration from SFOF to attend SFOF’s out-of-state conference because they qualify as lobbyist gifts.

In accordance with N.D.C.C. § 54-66-04.2, the Commission will publish this advisory opinion on its website. The Commission thanks State Auditor Gallion 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 September 30, 2026.

Dated this 30th day of September, 2026.



Pamela Sharp, Chair
North Dakota Ethics Commission