

*Via email only*

February 16, 2023

Mark Jorritsma, Executive Director  
North Dakota Family Alliance  
1515 Burnt Boat Drive, C-148  
Bismarck, ND 58503  
[mark@ndfamilyalliance.org](mailto:mark@ndfamilyalliance.org)

Re: Request for Advisory Opinion dated November 11, 2022 (No. 22-02)

Dear Mr. Jorritsma:

The Ethics Commission ("Commission") is in receipt of your request for an advisory opinion dated November 11, 2023. As previously communicated to you on November 22, 2022, the Ethics Commission has decided to issue an advisory opinion in accordance with North Dakota Century Code (N.D.C.C.) § 54-66-04.2. In your request, you present three (3) specific questions for the Commission's consideration:

1. Whether the event described in your request is allowable under the 2023 North Dakota ethics rules and statutes. Additionally, if such an event is permissible, what limitations do the ethics rules and statutes place on the event.
2. Whether the sponsor of the event needs to reveal the donor(s) who underwrite the costs of the event.
3. Whether the Ethics Commission rules apply differently when a 501(c)(3) tax exemption organization or a 501(c)(4) sister organization hosts the event.

#### FACTUAL BACKGROUND

In the request for an advisory opinion, Mr. Jorritsma describes the event at issue. As described in the letter, the event will be a dinner with a "sit-down" meal and all 141 members of the Legislative Assembly will be invited. Other state officials may also be invited "to the extent they are related to legislative activities," (e.g. Lieutenant Governor). According to Mr. Jorritsma, the purpose of the event is to: (1) educate legislators on who the North Dakota Family Alliance is, (2) highlight the successful legislative policy work the North Dakota Family Alliance has accomplished in the first part of session, and (3) thank legislators who helped the North Dakota Family Alliance achieve wins. There will be a brief presentation by either the Executive Director or the Chairman of the Board from the North Dakota Family Alliance. Mr. Jorritsma notes "[t]he event would in no way

request any favors, benefits, or specific voting actions from the legislators. It would simply be intended for educational purposes and thanking them.”

The North Dakota Family Alliance plans to pay for the meal and beverages at the event, but there will be no alcoholic beverages available at the event. The overall cost of the event is estimated to be ~\$15,000, which includes the cost of the meal (\$20-\$30/person), room rental, fees such as gratuities, marketing and communications costs, and possible costs for an event planner. The North Dakota Family Alliance estimates approximately 60-80 legislators will attend the event, but the attendance could be as high as 120. Mr. Jorritsma does not indicate who, beside public officials, himself, and/or the Chairman of the Board, will attend the event.

The dinner event is to be funded by a “major donor who proposed the idea and is keen to see [the North Dakota Family Alliance] host such an event” and the donor would provide the entire “financial underwriting.” Alternatively, the North Dakota Family Alliance may seek donations of lesser amount to cover the costs of the event. For examples, seeking three (3) donors to contribute \$5,000 each to cover the costs of the event.

#### LEGAL BACKGROUND

Section 2 of Article XIV of the North Dakota Constitution provides:

A lobbyist may not knowingly give, offer, solicit, initiate, or facilitate a gift to a public official. A public official may not knowingly accept a gift from a lobbyist.

...

“Gift,” as used in this subsection, means any item, service, or thing of value not given in exchange for fair market consideration, including gifts of travel or recreation. However, “gift” does not mean any purely informational material, campaign contribution, or, in order to advance opportunities for North Dakota residents to meet with public officials in educational and social settings inside the state, any item, service, or thing of value given under condition that do not raise ethical concerns, as determined by rules adopted by the ethics commission.

N.D. Const. Art. XIV(2)(1). Section 54-66-03 of the North Dakota Century Code codifies this portion of Article XIV and outlines the civil penalties for violations of the section. In 2020, the Ethics Commission adopted rules related to gift, found in North Dakota Administrative Code (N.D.A.C.) Article 115-03. These rules further define the terms “gift,” “lobby,” and “lobbyist.” Section 115-03-01-01(2) 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.” N.D.A.C. § 115-03-01-01(2). 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). Additionally, 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 baseline 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 the public official. N.D.A.C. § 115-03-01-02(1). Reciprocally, a public official may not knowingly accept a gift from a lobbyist offered in conjunction with the lobbyist efforts to lobby the public official. However, there are several exceptions to this general, baseline rule. Id.

Pursuant to Section 115-03-01-03 of the North Dakota Administrative Code, the gift prohibition does not apply to certain enumerated items given under conditions that do not raise ethical concerns, including food and beverage served for immediate consumption at a private or public social and educational event. N.D.A.C. § 115-03-01-03(7). Of course, to understand this exemption from the general gift prohibition, one needs to consider the definition of a "private social and educational event" and a "public social and educational event" – both of which are defined in the gift rule.

For an event to be considered "private social and educational event" or a "public social and educational event" such that the food and beverage consumed at such an event would be exempt from the gift prohibition, the event must fall within the definitions provided by Section 115-03-01-01(7) and (9). For an event to qualify as a "private social and educational event," the event is to be 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." N.D.A.C. § 115-03-01-01(7). Further, the event "must include an educational component" and a lobbyist required to register under N.D.C.C. ch. § 54-05.1 and public officials may not be the only state residents in attendance. Id. An event is a "public social and educational event" when the event is held within North Dakota and attendance is open to any state residents and others. N.D.A.C. § 115-03-01-01(9). Again, the event "must include an educational component" and a lobbyist required to register under N.D.C.C. ch. § 54-05.1 and public officials may not be the only state residents in attendance. Id.

Article 115-03 of the North Dakota Administrative Code also instructs that a notice of a public or private event is to be submitted to the Commission prior to the private or public social and educational event. A form to provide notice is available on the Commission's website

(www.ethicscommission.nd.gov). However, notifying the Commission of an event "does not constitute approval of the event" by the Commission. N.D.A.C. § 115-03-01-04(1).

### ETHICS ANALYSIS

To determine whether the event described in the request is allowable under Ethics Commission rules as well as statutes, hinges on the application of the gift rules as outlined in the North Dakota Constitution, North Dakota Century Code, and the North Dakota Administrative Rules. The Commission considers each of the questions presented by Mr. Jorritsma in turn.

#### Gift Rules for Events

In the first question presented in the request for advisory opinion, Mr. Jorritsma essentially is asking whether the food and drink provided to legislators and other public officials as part of the described event is a prohibited gift or whether it is allowable.

As discussed above, the general rule is that a lobbyist may not knowingly give a gift to a public official in conjunction with any effort to lobby the public official. N.D.A.C. § 115-03-01-02(1). Reciprocally, a public official may not knowingly accept a gift from a lobbyist offered in conjunction with the lobbyist efforts to lobby the public official. Id.

In his request, Mr. Jorritsma states that the event would in no way request any favors, benefits, or specific voting actions from the legislators, but would simply be intended for educational purposes and thanking legislators. Nonetheless, the Commission finds the North Dakota Family Alliance would be lobbying legislators during the event. Based upon the description, the North Dakota Family Alliance plans to speak about the legislative wins it has had and plan to educate legislators. By discussing its legislative wins and educating legislators, the North Dakota Family Alliance is inherently attempting to influence public official action or decision. N.D.A.C. § 115-03-01-01(4). Moreover, one must view the event in the context of North Dakota Family Alliance's overall lobbying efforts before the Legislative Assembly. One cannot view the event in isolation. Accordingly, the Commission finds the North Dakota Family Alliance, and its employees, would be functioning as a lobbyist pursuant to the Commission rules.

While the North Dakota Family Alliance is prohibited from knowingly giving a gift to public officials as it falls under the definition of lobbyist, the Commission must next consider whether the exception to the prohibition applies to the food and beverages consumed by the public officials at the event described in the request. For the exception to the prohibition to apply, the event must qualify as a public or private social and educational event. Based upon the information provided in the request, the event is by invitation only, and thus is a private event. The event must also include an educational component and a registered lobbyist and public officials may not be the only state residents in attendance. N.D.A.C. § 115-03-01-01(9).

The request describes three (3) purposes of the event, two (2) of which are described as educational: educating legislators on who the North Dakota Family Alliance is and highlighting the successful legislative policy work the North Dakota Family Alliance has accomplished in the first part of session. The Commission considers educating legislators about the North Dakota Family Alliance to likely meet the minimum standard to qualify as an educational component. While perhaps meeting the floor, this educational component is not robust. An educational component of a private or public social and educational event should serve to inform 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. Therefore, the Commission finds there will likely be an educational component to the event.

In order to determine whether the exception to the prohibition applies to the food and beverages consumed by the public officials at the event described in the request, a registered lobbyist and public officials may not be the only state residents in attendance at the event. Id. In his request, Mr. Jorritsma does not describe the individuals who will be invited to the event other than public officials. There is a note that there will be a brief presentation by either the Executive Director, who is a registered lobbyist, or the Chairman of the Board from the North Dakota Family Alliance. There appears to be the possibility that the only individuals in attendance at the event will be public officials and registered lobbyist, which is not permitted under N.D.A.C. § 115-03-01-01(9). Instead, other state residents must be in attendance at the event. If this condition is satisfied, then the Commission finds the event described in the request is allowable under the North Dakota ethics rules and statutes, with the limitations discussed above.

The Commission adds that the North Dakota Family Alliance may not give and public official may not accept other items, services, or things of value as these are considered prohibited gifts. The exception to the gift prohibition applies only to food or beverage immediately consumed at the private social and educational event.

#### Revealing Donor Information

The second question presented by the request is whether the sponsor of the event needs to reveal the donor(s) who underwrite the costs of the event. There is nothing contained within the rules or statutes that directly answers this question. The Commission then turns to section 115-03-01-04 of the North Dakota Administrative Code for guidance. Section 115-03-01-04 requires a *sponsor* of an event to file notice of the event with the Commission. N.D.A.C. § 115-03-01-04(1) (emphasis added).

The unique question to consider is whether the donor, who is paying for the costs of the event, is the sponsor of the event and is responsible for notifying the Commission of the event, or if the donor is merely donating the funds to the North Dakota Family Alliance to enable the Alliance to host the event. To determine whether the donor is a sponsor, or co-sponsor, likely depends on the timing of the donation in relation to the event, whether the donation is earmarked for the

event, whether the amount of the donation is similar to the cost of the event, and any other factors that tend to establish the donor is or is not functioning as a sponsor.

There are insufficient facts presented in the request to conclude whether the donor is in fact functioning as a sponsor of the event. The Commission hopes the factors outlined above assist the North Dakota Family Alliance in evaluating whether the donor functions as a sponsor and should be identified as such on the notice form submitted to the Commission.

#### Effect of Organization Hosting the Event

The final question presented by the request is whether the Commission treats events hosted by a 501(c)(3) tax exemption organization compared to a 501(c)(4) sister organization differently. The Commission does not distinguish between the two types of entities in the application of its rules. However, there are likely other laws, regulations, or rules which affect the activities in which these types of organization can participate and how they each function. Addressing each of those is outside the Commission's jurisdiction over ethics related to transparency, corruption, elections, and lobbying and the Commission will not address them here.

#### CONCLUSION

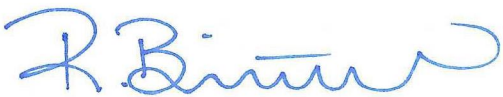
For the reasons set forth above, the Commission answers Mr. Jorritsma's questions as follows:

1. The event described in the request is allowable under the 2023 North Dakota ethics rules and statutes, with the limitations discussed above.
2. The sponsor of the event may be required to reveal the donor(s) who underwrite the costs of the event depending on the circumstances
3. The rules adopted by the Commission do not apply differently to the two types of tax exempt entities; however, other rules and regulations may apply that place limitations on either entity.

In accordance with N.D.C.C. § 54-66-04.2, this advisory opinion is to be published on the Ethics Commission website and accessible to the public. The Commission thanks Mr. Jorritsma for seeking advice regarding this issue.

This Advisory Opinion was approved by the Ethics Commission at a special meeting held February 14, 2023.

Sincerely,



Rebecca Binstock  
Executive Director, North Dakota Ethics Commission