

*Before the North Dakota Ethics Commission*

Requested by:  
Shawn McKenna, Executive Director,  
North Dakota Association  
of Nonprofit Organizations

**ADVISORY OPINION NO. 24-02**

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On December 2, 2024, the Ethics Commission (“Commission”) received an advisory opinion request from a lobbyist, Mr. Shawn McKenna, the executive director of the North Dakota Association of Nonprofit Organizations (“NDANO”). 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 questions presented to the Commission for consideration are summarized below.

1. When an organization hosts an educational conference where attendees pay for their meals, does covering a legislator’s meal cost comply with Article XIV of the North Dakota Constitution, ethics rules in N.D. Admin. Code ch. 115-03-01, and N.D.C.C. chapter 54-66?
2. Does awarding an acrylic plaque to a legislator at the educational conference create additional ethical concerns or compliance obligations under Article XIV of the North Dakota Constitution, ethics rules in N.D. Admin. Code ch. 115-03-01, and N.D.C.C. chapter 54-66?

**I. FACTUAL BACKGROUND**

In the request for an advisory opinion, Mr. McKenna describes the event at issue. According to Mr. McKenna, NDANO hosts an annual conference. The request for advisory opinion describes the annual conference: “This multi-day conference has a primarily educational focus, but there is a lunch where the awards are presented in several categories.” One such award recognizes a legislator for the legislator’s contributions to a specific sector. The award has traditionally been printed on paper and framed. However, for the upcoming conference, NDANO intends to present the award as an acrylic plaque to match the quality of other awards distributed to non-legislators. Conference attendees pay for their lunch meals, except for those given an award. NDANO bears the cost of the awards and meal costs for the award recipients, including legislator-recipients.

**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) N.D.C.C. ch. 54-66.

**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 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.”

**B. N.D.C.C. 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).<sup>1</sup> Under N.D.C.C. § 54-66-03(3):

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

- 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. This means if a lobbyist gives a prohibited gift to a public official and the public official accepts, both the lobbyist and public official may be assessed a penalty. *See id*; N.D. Admin. Code § 115-03-01-02(3).

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<sup>1</sup> 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 generally* N.D.C.C. ch. 54-66.

**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) *with* N.D. Admin. Code § 115-03-01-01(4)-(5). 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(7)-(8).

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). An individual who engages in the described conduct is considered a “lobbyist.” *Id.*

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 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 education events. The Commission said, “An 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.

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**

For NDANO to present an acrylic plaque as an award to a legislator without ethical liability, one of the exceptions to the gift prohibition must apply. Based upon a review of the facts presented in the advisory opinion, the Commission turns to consider whether the annual conference is a private or public social and educational event. As noted above, the difference between these two types of events is whether the event is open to the public or by invitation only. Importantly, in either scenario, the event must occur in the State of North Dakota and include participants who are non-lobbyists and non-public officials.

The event must also include an educational component. The facts presented in the request do not describe the details of the educational component; therefore, the Commission is not able to analyze whether the event meets the criteria for a private or public educational and social event. In accordance with our earlier opinion, the educational component should serve to inform the attendees 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 NDANO. 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.

Finally, the NDANO must also 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.

For the purposes of this advisory opinion, the Commission presumes without deciding NDANO's annual conference is either a private or public social and educational event. Operating from this presumption, the Commission next turns to consider whether NDANO can give an acrylic plaque and food or beverages to a legislator at its lunch event as part of its annual conference.

#### **A. Meal at Lunch Event**

Food or beverage at an event is a thing of value and fits the constitutional definition of a "gift" under Article XIV. Assuming the NDANO annual conference meets the criteria for either a private or public social and educational event, it is permissible to provide a meal to a legislator. Section 115-03-01-03(7) specifically excepts "[f]ood and beverage served for immediate consumption at any private or public social and educational event" from the gift prohibition.

#### **B. Awarding an Acrylic Plaque**

The request also asks if it is permissible to award an acrylic plaque to a legislator at the conference. The request notes, "There would also be a dollar value to the award that is presented." Because a dollar value is associated with the acrylic plaque, it is a thing of value and fits the constitutional definition of a gift under Article XIV.

However, 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). Assuming the NDANO annual conference meets the criteria as a private or public social and educational event, it is permissible to provide "gifts or other things

of value shared as a cultural or social norm” to public officials. *Id.* This exception requires careful analysis.

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 includes 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.

#### **IV. CONCLUSION**

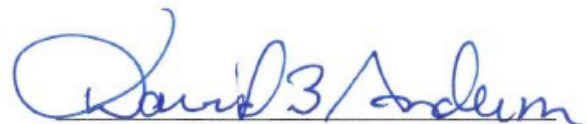
The Commission answers Mr. McKenna’s questions as follows:

1. An organization hosting a conference where attendees pay for their meals can cover the cost of a legislator’s meal, if the event otherwise meets the criteria for a private or public social and educational event.
2. Awarding an acrylic plaque to a legislator at a private or public social and educational event is permissible if the plaque does not derive independent resale value.

In accordance with N.D.C.C. § 54-66-04.2, the Commission will publish this advisory opinion on its website. The Commission thanks Mr. McKenna for seeking advice regarding this issue.

This advisory opinion was approved by the Commission at a special meeting held on March 7, 2025. Commissioner Murray Sagsveen declared a potential conflict of interest and recused from this advisory opinion pursuant to N.D. Admin. Code § 115-04-01-02.

Dated this 7th day of March, 2025.



Dave Anderson, Chair  
North Dakota Ethics Commission