

*Before the North Dakota Ethics Commission*

Requested by:  
Senator Joshua Boschee

**ADVISORY OPINION NO. 25-01**

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On January 14, 2025, the Ethics Commission (“Commission”) received an advisory opinion request from Senator Joshua Boschee. 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:

1. Are caregiving expenses—defined as direct care, protection, and supervision of a child or other person with a disability or a medical condition for which a candidate has direct caregiving responsibility—incurred as a direct result of campaign activity or holding public office deemed a permissible campaign expenditure in the state of North Dakota?
2. Are security expenses—defined as non-structural security devices; structural security devices; professional security personnel and services; and cybersecurity software, devices, and services—incurred as a direct result of campaign activity or holding public office deemed a permissible campaign expenditure in the state of North Dakota?

Due to the submission of the request during the 2025 legislative session and the Commission’s limited resources, the Commission worked with Senator Boschee on an agreeable timeline to issue the opinion and agreed to issuance on or before June 30, 2025. This extension was in part due to potential outcomes of proposed legislation which may have impacted the Commission’s analysis.

**I. FACTUAL BACKGROUND**

The questions presented by Senator Boschee are prospective and hypothetical. His request states, “I am requesting that the North Dakota Ethics Commission determine whether dependent care expenses and security costs incurred in connection with running for office or holding public office in North Dakota are considered personal use under the law or are considered permissible campaign expenditures.” The request asks the Commission to analyze the two questions from the standpoint of a candidate and a public official. Therefore, recognizing Senator Boschee is a public official under the Commission’s jurisdiction, the hypothetical facts are a candidate for office/public official plans to use campaign funds for caregiving and security expenses.

In his request, Senator Boschee cites eleven advisory opinions from the Federal Election Commission (“FEC”) analyzing similar issues under federal law. Senator Boschee includes the applicable North Dakota statutes with his request for an analysis from the Commission.

## **II. LEGAL BACKGROUND**

### **A. North Dakota Constitution Article XIV and Ethical Violations**

Article XIV, § 3 of the North Dakota Constitution establishes the North Dakota Ethics Commission. It states, “In order to strengthen the confidence of the people of North Dakota in their government, and to support open, ethical, and accountable government, the North Dakota ethics commission is hereby established.” N.D. Const. art. XIV, § 3(1). The Commission’s mission is “to strengthen the confidence of the citizens of North Dakota in their government by ensuring and promoting transparency and accountability.”

The Commission has the constitutional directive to “adopt ethics rules related to transparency, corruption, *elections*, and lobbying to which any lobbyist, public official, or candidate for public office shall be subject.” N.D. Const. art. XIV, § 3(2) (emphasis added). The North Dakota Constitution further directs the Commission to “investigate alleged violations” of its rules, Article XIV, and “related state laws.” *Id.* These investigations include allegations made against public officials and candidates for public office. Under N.D. Const. art. XIV, § 4(2), “‘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.”

In 2019, the Legislative Assembly created a statutory process for the Commission to evaluate complaints made against public officials and candidates for office. *See generally* N.D.C.C. ch. 54-66. At the end of this process, the Commission determines whether any ethical violation(s) occurred. N.D.C.C. § 54-66-09(2); N.D. Admin. Code § 115-02-01-08(3). During the complaint process, the Commission is directed to refer a complaint to law enforcement if the Commission “believes a complaint contains allegations of criminal conduct.” N.D.C.C. § 54-66-08(2). Prior to the 2025 legislative session, the statute made these criminal referrals mandatory. S.B. 2004, § 11, 69th Legis. Assemb., Reg. Sess. (N.D. 2025). However, the Legislative Assembly amended this statute. Criminal referrals of complaints are now left to the Commission’s discretion. *Id.*

When an individual under the Commission’s jurisdiction violates a criminal law related to transparency, corruption, elections, or lobbying, it creates an ethical violation. *See* N.D.C.C. § 54-66-09(2); N.D. Admin. Code § 115-02-01-08(3). Because the Commission is not part of the criminal justice system, the Commission will take official notice of the criminal court’s conclusion to find any ethical violation(s) resulting from a violation of a criminal statute. *See generally Mock Complaint Fact Pattern*, N.D. Ethics Comm’n, <https://www.ethicscommission.nd.gov/sites/www/files/documents/Mock%20Complaint%20Fact%20Pattern%20Packet.pdf> (last visited June 6, 2025) [hereinafter *Mock Complaint*].

## **B. Ethics Commission Advisory Opinions and Statutory Interpretation**

The Commission may provide advisory opinions to “a public official, candidate for elected office, or lobbyist.” N.D.C.C. § 54-66-04.2. The advisory opinions must relate to hypothetical facts or prospective conduct and may analyze the application of Article XIV of the North Dakota Constitution or “[s]tate statutes and ethics commission rules related to transparency, corruption, elections, and lobbying.” *Id.* (emphasis added). “Civil and criminal penalties may not be imposed” when an individual follows an advisory opinion, acts in good faith, and the material facts regarding the individual’s actions are “substantially the same as the conduct presented in the opinion.” *Id.*

When reviewing state law for an advisory opinion, the Commission applies the canons of construction in the same fashion as the courts. When interpreting statutes, the Commission will “look at their plain language and give each word its plain and ordinary meaning unless a contrary intention plainly appears.” *Meier v. N.D. Dep’t of Hum. Servs.*, 2012 ND 134, ¶ 6, 818 N.W.2d 774 (citing *Interest of T.H.*, 2012 ND 38, ¶ 22, 812 N.W.2d 373; N.D.C.C. § 1-02-02). Statutes must also be construed as a whole and harmonized to give meaning to related provisions. *Id.*; see also N.D.C.C. § 1-02-07. Additionally, “[i]f statutory language is ambiguous or doubtful in meaning, courts may consider extrinsic aids, such as legislative history, to determine legislative intent.” *Meier*, 2012 ND 38, ¶ 6, 818 N.W.2d 774.

These same principles apply when interpreting the North Dakota Constitution. *Kelsh v. Jaeger*, 2002 ND 53, ¶ 7, 641 N.W.2d 100. In *Kelsh v. Jaeger*, the North Dakota Supreme Court stated:

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. When interpreting constitutional provisions, we apply general principles of statutory construction. We must give effect and meaning to every provision and reconcile, if possible, apparently inconsistent provisions. We presume the people do not intend absurd or ludicrous results in adopting constitutional provisions, and we therefore construe such provisions to avoid those results.

*Id.* (internal citations omitted).

## **C. Campaign Finance Law**

Under Article XIV, § 2(4) of the North Dakota Constitution, “A statewide candidate, candidate for the legislative assembly, or public official may not knowingly use a campaign contribution for personal use or enrichment. Appropriate civil and criminal sanctions for violations of this subsection shall be set by the legislative assembly.” Prior to the creation of Article XIV, the Legislative Assembly codified this principle in N.D.C.C. § 16.1-08.1-04.1. The statute states:

1. A candidate may not use any contribution received by the candidate, the candidate's candidate committee, or a multicandidate political committee to:
  - a. Give a personal benefit to the candidate or another person;
  - b. Make a loan to another person;
  - c. Knowingly pay more than the fair market value for goods or services purchased for the campaign; or
  - d. Pay a criminal fine or civil penalty.
2. If the secretary of state has substantial reason to believe any person knowingly violated this section, the secretary shall arrange for an audit as authorized by section 16.1-08.1-05.

N.D.C.C. § 16.1-08.1-04.1.

A willful violation of the statute is a class A misdemeanor. N.D.C.C. § 16.1-08.1-07. It is also an ethical violation. *See Mock Complaint, supra*. The civil sanction required by Article XIV can be imposed through the audit process. N.D.C.C. § 16.1-08.1-05(1) (stating "If an audit of a statement arranged by the secretary of state under this subsection reveals a violation of this chapter, the candidate, political party, political committee, or other person filing the statement shall pay a fine to the secretary of state equal to two hundred percent of the aggregate of contributions and expenditures found to be in violation or an amount sufficient to pay the cost of the audit, whichever is greater."); *see also* N.D.C.C. § 16.1-08.1-05(2) (imposing the same civil sanction when a violation is found during an audit requested by "any interested party").

"Contribution" and "personal benefit" are defined by N.D.C.C. § 16.1-08.1-01. It states, in part:

4. "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription, loan, advance, deposit of money, or anything of value, made for the purpose of influencing the nomination for election, or election, of any person to public office or aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes. The term includes funds received by a candidate for public office or a political party or committee which are transferred or signed over to that candidate, party, or committee from another candidate, party, or political committee or other source including a conduit. The term "anything of value" includes any good or service of more than a nominal value. The term "nominal value" means the cost, price, or worth of the good or service is trivial, token, or of no appreciable value. The term "contribution" does not include:
  - a. A loan of money from a bank or other lending institution made in the regular course of business.
  - b. Time spent by volunteer campaign or political party workers.

- c. Money or anything of value received for commercial transactions, including rents, advertising, or sponsorships made as a part of a fair market value bargained-for exchange.
- d. Money or anything of value received for anything other than a political purpose.
- e. Products or services for which the actual cost or fair market value are reimbursed by a payment of money.
- f. An independent expenditure.
- g. The value of advertising paid by a political party, multicandidate political committee, or caucus which is in support of a candidate.
- h. In-kind contributions from a candidate to the candidate's campaign.

...

- 11. "Personal benefit" means a benefit to the candidate or another person which is not for a political purpose or related to a candidate's responsibilities as a public officeholder, and any other benefit that would convert a contribution to personal income.

N.D.C.C. § 16.1-08.1-01.

"Political purpose," as used in the definition of "personal benefit," means:

any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office and includes using "vote for", "oppose", or any similar support or opposition language in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. In the period thirty days before a primary election and sixty days before a special or general election, "political purpose" also means any activity in which a candidate's name, office, district, or any term meaning the same as "incumbent" or "challenger" is used in support of or in opposition to the election or nomination of a candidate to public office. The term does not include activities undertaken in the performance of a duty of a public office or any position taken in any bona fide news story, commentary, or editorial.

N.D.C.C. § 16.1-08.1-01(14).

#### **D. Other Jurisdictions**

The Commission looks to other jurisdictions to consider how those jurisdictions handle similar issues. The Commission recognizes interpretations from other jurisdictions are not binding on North Dakota courts or the Commission. *See Loken v. Magrum*, 380 N.W.2d 336, 339 (N.D. 1986) (explaining when North Dakota statutes are derived and similar to another jurisdiction's statutes cases interpreting the other jurisdiction's statutes are relevant and persuasive, but not binding, to interpret North Dakota law). However, interpretations of similar law are instructive.

**1. Federal Law – Federal Election Commission**

As noted above, Senator Boschec cited eleven advisory opinions from the FEC in his request to the Commission. These advisory opinions interpret federal campaign finance law and what expenditures are permissible for federal candidates with campaign funds. Specifically, the advisory opinions focus on childcare and security costs.

The Federal Election Campaign Act and FEC regulations limit when a federal candidate may use campaign funds. The FEC has explained:

Under the Act and Commission regulations, an authorized committee may use its funds for several specific purposes, including “ordinary and necessary expenses incurred in connection with duties of the individual as a holder of [f]ederal office,” and “any other lawful purpose” that does not otherwise constitute conversion of campaign funds to “personal use.” *See* 52 U.S.C. § 30114(a), (b); 11 C.F.R. §§ 113.1, 113.2. The Act and Commission regulations define “personal use” as the use of campaign funds “to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign” or duties as a federal officeholder. 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g).

The Act and Commission regulations provide a non-exhaustive list of uses of campaign funds that are *per se* personal use. 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i). For uses of campaign funds not included on this list, the Commission determines, on a case-by-case basis, whether the use is a prohibited “personal use,” *i.e.*, whether the expense would exist irrespective of the candidate’s campaign or federal officeholder duties. 11 C.F.R. § 113.1(g)(1)(ii).

Fed. Election Comm’n, Advisory Op. 2018-06, 2 (2018).

The FEC has further explained how it determines “whether the expense would exist irrespective of the candidate’s campaign or federal officeholder duties.” It said, “The Commission has long recognized that if a candidate ‘can reasonably show that the expense at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use.’” Fed. Election Comm’n Advisory Op. 2017-07, 2 (2017) (quoting Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995)). Using this interpretation, the FEC has analyzed general and specific instances of whether a use is a prohibited “personal use” under federal campaign finance law. *E.g., id.* (reviewing use of campaign funds for non-structural security devices); Fed. Election Comm’n, Advisory Op. 2018-06 (2018) (reviewing the use of campaign funds for childcare expenses); Fed. Election Comm’n Advisory Op. 2022-17 (2022) (reviewing the use of campaign funds for cybersecurity measures); Fed. Election Comm’n Advisory Op. 2021-03 (2021) (reviewing the use of campaign funds for personal security personnel).

**a. *FEC Analysis Regarding Childcare Expenses***

In FEC Advisory Opinion 2018-06, the FEC analyzed whether a congressional candidate could

use campaign funds to pay for childcare expenses to “devote the time necessary to run [the candidate’s] campaign.” Fed. Election Comm’n, Advisory Op. 2018-06, 1-2 (2018). The FEC noted the Federal Election Campaign Act and FEC regulations “do not expressly address childcare expenses.” *Id.* at 2. Childcare expenses are not listed on the non-exhaustive list of uses that constitute personal use under federal law. *Id.* As a result, the FEC analyzed “whether the proposed use of campaign funds for certain childcare expenses would exist irrespective of the candidate’s campaign for federal office.” *Id.* The FEC concluded that the proposed childcare expenses “*to the extent such expenses are incurred as a direct result of campaign activity*, would not exist irrespective of [the candidate’s] election campaign, and thus may be permissibly paid with campaign funds” under federal law. *Id.* at 3 (emphasis added).

**b. *FEC Analysis Regarding Security Expenses***

In FEC Advisory Opinion 2017-07, the sergeant at arms, as chief law enforcement official for the U.S. House of Representatives, requested the FEC analyze whether it is permissible for members of the House to spend campaign funds to install or upgrade non-structural residential security systems. Fed. Election Comm’n, Advisory Op. 2017-07, 1 (2018). The sergeant at arms informed the FEC members of the House “receive threatening communications on a daily basis” and “the incidence of such threats is increasing.” *Id.* The sergeant at arms also provided statistics, “In calendar year 2016, the United States Capitol Police investigated 902 threatening communications received by Members, while in approximately the first six months of 2017 they have investigated 950 such communications.” *Id.*

Residential security systems are not listed on the non-exhaustive list of uses that constitute personal use under federal law. *Id.* at 2. As a result, the FEC analyzed: (1) whether the threats were motivated because the members of the House were federal officeholders and/or candidates; and (2) whether the expenses for security costs would exist irrespective of their duties as federal officeholders and/or candidates. *Id.* at 3. In light of the threat assessment and general threat environment the FEC said:

Members of Congress may, while in office, use campaign funds to pay for the reasonable costs associated with installing (or upgrading) and monitoring a security system at Members’ residences, as described in this opinion, regardless of whether those Members have received specific or ongoing threats, without such payments constituting a prohibited personal use of campaign contributions under the Act and Commission regulations. Specifically, the Commission authorizes the use of campaign funds to pay for the installation (or upgrade) and monitoring costs of cameras, sensors, distress devices, and similar non-structural security devices, as well as locks, in and around a Member’s residence. These expenses must be reported as “residential security expenses” on campaign-finance reports; simultaneously with the approval of this Advisory Opinion, the Commission will add “residential security expenses” to its list of reporting purposes deemed “adequate” for campaign disbursements.

*Id.*

Since 2018, the FEC has allowed the use of campaign funds by members of Congress for instances of cybersecurity and professional security personnel. *See generally* Fed. Election Comm’n, Advisory Op. 2021-03 (2021) (allowing the use of campaign funds for professional security personnel when a member of Congress and the member’s family are not protected by federal agents); Fed. Election Comm’n, Advisory Op. 2022-17 (2022) (allowing a senator to pay for residential cybersecurity costs with campaign funds). In all instances related to security, the FEC has noted either a direct threat to a specific member of Congress, a generalized threat to all members of Congress, or both as a reason the expenditure of campaign funds is permissible. *E.g.*, Fed. Election Comm’n, Advisory Op. 2022-02, 4-5 (2022) (noting specific and generalized threats exist); Fed. Election Comm’n, Advisory Op. 2020-06, 4 (2020) (noting direct threats resulted in the sergeant at arms recommending additional wiring and lighting for a security system). When the expenditure of campaign funds is permitted, it must be in accordance with the fair market value for the item or service purchased. Fed. Election Comm’n, Advisory Op. 2022-02, n. 4 (2022).

## **2. Other States**

Some states explicitly allow candidates for office to use campaign funds for childcare and security expenses. *E.g.*, Minn. Stat. § 10A.01, subd. 26(a)(29) (allowing candidates to spend \$3,000 in campaign contributions per election cycle on security expenses); Mont. Code § 13-37-220 (allowing candidates to use campaign contributions to pay childcare expenses when “engaged in campaign activity”). Other states have analyzed these issues through advisory opinions.

In 2018, the Texas Ethics Commission issued an advisory opinion regarding the use of campaign funds for childcare expenses. Tex. Ethics Comm’n, Advisory Op. 547, 1 (2018). Texas law prohibits the conversion of a political contribution to a personal use. *Id.* As explained by the Texas Ethics Commission, “personal use” means “a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate.” *Id.* The advisory opinion notes that payment for childcare services furthers some individual or family purposes. *Id.* However, the Texas Ethics Commission explained a use “may have some incidental benefits to the individual candidate,” but cannot primarily serve individual or family purposes. *Id.* The facts presented for the advisory opinion state, “[T]he candidate began paying for childcare services only after becoming a candidate, and the candidate’s stated purpose in acquiring the childcare services is to allow or facilitate her participation in campaign activities.” *Id.* The Texas Ethics Commission determined “the payments would not primarily further individual or family purposes connected with the performance of duties or activities as a candidate and therefore would not constitute personal use.” *Id.*

Other state ethics commissions have issued advisory opinions analyzing the use of campaign funds to pay for childcare expenses. Similar to the FEC and the Texas Ethics Commission, these states focus on whether the expenditure converts campaign funds to personal use. *E.g.*, Ala. Ethics Comm’n, Advisory Op. 2018-04, 2-3 (2018) (determining a candidate could use campaign funds for childcare expenses under Alabama law using the FEC’s “irrespective” standard); Okla. Ethics Comm’n, Advisory Op. 2023-01, 5 (2023) (determining payment for childcare with campaign funds is permissible if the expenses would not exist “but for” the campaign or officeholder status, but is not permissible if the expenses would exist “irrespective” of this status); Kan. Ethics



Comm’n, Advisory Op. 2018-04, 2 (2018) (following the FEC’s “irrespective” standard and suggesting “that candidates and office holders seek guidance from the [Kansas Governmental Ethics] Commission’s staff prior to using any campaign fund for expenses that may be considered questionable”).

In 2022, the Arkansas Ethics Commission issued an advisory opinion analyzing the use of campaign funds for security expenses under Arkansas law. Ark. Ethics Comm’n, Advisory Op. 2022-EC-002, 1 (2022). The Arkansas Ethics Commission analyzed the issue using hypothetical facts of a candidate receiving “specific, targeted threats of physical harm and death” and security professionals recommending enhanced security based on the “general climate of violence towards public officeholders and candidates for public office.” *Id.* Arkansas law prohibits taking “any campaign funds as personal income.” *Id.* This means using “campaign funds or remaining campaign funds to fulfill any commitment, obligation or expense that would exist regardless of the candidate’s campaign or officeholder activity” and an officeholder using “remaining campaign funds to fulfill any commitment, obligation or expense that would exist regardless of the duties and responsibilities of his or her office.” *Id.* (citing Ark. Ethics Comm’n Rules on Campaign Fin. & Disclosure § 208(a)).

The Arkansas Ethics Commission concluded, “A campaign could use campaign funds to provide security to protect a candidate and the candidate’s immediate family and staff while at campaign events, the campaign headquarters, and during the candidate’s time at home.” *Id.* at 2. The Arkansas Ethics Commission reasoned, “A person not running for office does not need constant security to protect their personal, physical safety; most people have not received specific targets threats of physical harm and death.” *Id.* However, this permissible use was limited to “places where the candidate is asserting themselves as a candidate, and at their home, where they have received specific threats.” *See id.* The Arkansas Ethics Commission further cautioned that specific facts could change the analysis and campaign funds should not be used for a security expense that existed “regardless of the campaign.” *Id.*

### **III. ETHICS ANALYSIS**

Similar to federal law, North Dakota law does not explicitly address using campaign contributions for caregiver or security expenses. *Compare* 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) (providing a list but not including caregiver or security expenses) *with* N.D. Const. art. XIV, § 2(4) and N.D.C.C. § 16.1-08.1-04.1. Rather, general terms are used. The North Dakota Constitution prohibits the use of campaign contributions for “personal use or enrichment” and state statute uses the term “personal benefit.” The Commission concludes the terms are synonymous based on their plain, ordinary, and commonly understood meanings. *See Enrichment, Black’s Law Dictionary* (12th ed. 2024) (“The receipt of a benefit.”); N.D.C.C. § 16.1-08.1-01(11) (defining “personal benefit”). Therefore, the Commission will analyze the statutory definition of personal benefit.

Personal benefit is defined as “a benefit to the candidate or another person *which is not for a political purpose or related to a candidate’s responsibilities as a public officeholder*, and any other benefit that would convert a contribution to personal income.” N.D.C.C. § 16.1-08.1-01(11) (emphasis added). Based on a plain reading of this definition, a personal benefit does not arise if

the campaign contributions are used for: (1) a political purpose; or (2) a purpose related to the responsibilities as a public officeholder.

“Political purpose” is also defined in statute. It means, “*any activity* undertaken in support of or in opposition to the election or nomination of a candidate to public office . . . The term does not include activities undertaken in the performance of a duty of a public office or any position taken in any bona fide news story, commentary, or editorial.” N.D.C.C. § 16.1-08.1-01(14).

The statutory definitions make clear a personal benefit does not occur when campaign contributions are used for two types of expenditures: (1) for “any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office;” and (2) for a purpose “related to a candidate’s responsibilities as a public officeholder.” N.D.C.C. §§ 16.1-08.1-01(11), 16.1-08.1-01(14), 16.1-08.1-04.1(1)(a). The fundamental determination is whether the expenses exist irrespective of campaign duties or the duties of public office.

The Commission finds the analysis by the FEC and other state ethics commissions instructive to make this determination. Like those jurisdictions, the question becomes: Can the candidate or elected public official reasonably show the expense at issue resulted from campaign or officeholder activities? If the answer is yes, then the use of campaign funds is permitted. If the answer is no, then the use of campaign funds is prohibited.

## **A. Caregiver Expenses**

By answering the above question, a person running for office and/or serving as a public official can determine when it is permissible to use campaign funds for caregiver expenses. A few scenarios exist that require such analysis. In one scenario, the candidate/public official has obligations outside of campaign events or public duties that require a regularly scheduled caregiver. Here, the caregiver expenses are not resulting from the campaign or holding public office. If no campaign and no public duties existed, the individual would still need a regular caregiver for the individual’s dependents. Using campaign funds to pay for caregiver expenses is not permitted in this scenario.

In a second scenario, a candidate/public official may not need a regularly scheduled caregiver until the individual is running for office or in office. In other words, this individual has no other obligations that would require a caregiver on a regularly scheduled basis. Here, the caregiver expenses have resulted from the campaign and holding public office. If no campaign and no public duties exist, the individual would not have the caregiver expense. Using campaign funds to pay for caregiver expenses is permitted in this scenario.

In a third scenario, a candidate/public official could have a regularly scheduled caregiver prior to becoming a candidate/public official. However, there may be events that require additional caregiving as a direct result of the campaign or holding public office. For example, this individual may need to participate in evening and weekend campaign events or events to carry out public duties. Here, the additional caregiver expenses result from campaigning or holding public office. The expense is directly tied to the campaign or public duties. Using campaign funds to pay for the additional caregiver expenses in this scenario is permitted under North Dakota law.

As outlined above, the use of campaign funds to pay caregiver expenses depends on the scenario. In all scenarios, candidates and public officials need to analyze whether they can reasonably show the caregiver expense resulted from campaign or officeholder activities.

## **B. Security Expenses**

The same analysis applies to the use of campaign contributions for security expenses. Running for office and holding public office can make individuals prone to threats against their personal safety. In 2017, the FEC recognized members of Congress face a daily threat environment “due to their status as federal officeholders.” Fed. Election Comm’n, Advisory Op. 2017-07, 3 (2018). Although state level office may draw less attention than holding federal office, the Commission recognizes a general threat environment still exists.

Recently in neighboring Minnesota, two state legislators and their spouses were shot in their homes. Michelle Griffith, *Minnesota House Democratic Leader Dead After “Politically Motivated Assassination,”* Minnesota Reformer (June 14, 2025, 10:50 AM), <https://minnesotareformer.com/2025/06/14/minnesota-house-democratic-leader-dead-after-targeted-shooting-democratic-senator-also-shot/>. According to law enforcement, the suspect in the shootings had a list of individuals in other states. Mary Murphy, “*Two Sleepless Nights*”: *Minnesota Shooting Suspect in Custody*, Forum Commc’ns Co. (June 15, 2025, 10:00 PM), <https://www.inforum.com/news/minnesota/update-minnesota-shooting-suspect-in-custody-after-2-day-manhunt>. It appears individuals in North Dakota were not included on this list. *Id.* However, North Dakota officials still face targeted threats. Jeff Beach, *North Dakota Removes Lawmaker Addresses from Website in Response to Shooting*, North Dakota Monitor (June 16, 2025, 4:25 PM), <https://northdakotamonitor.com/2025/06/16/north-dakota-removes-lawmaker-addresses-from-website-in-response-to-shooting/> (reporting a Fargo legislator received “direct threats” in reaction to sponsoring legislation). In fact, a North Dakota man has been charged with federal crimes after allegedly referencing the Minnesota shootings and threatening an individual in the U.S. Attorney’s Office for the District of North Dakota. Tasha Carvell, *North Dakota Man Charged with Violent Threats Against Officials Following Minnesota Shootings*, Forum Commc’ns Co. (June 17, 2025, 1:42 PM), <https://www.inforum.com/news/north-dakota/north-dakota-man-charged-with-violent-threats-against-officials-following-minnesota-shootings>.

In response to the Minnesota shootings and in concern for the safety of North Dakota legislators, the North Dakota Legislative Council removed home addresses of legislators from the legislative website. Rob Port, *Port: In Wake of Minnesota Attacks, North Dakota Officials Scramble to Take Down Personal Info for Lawmakers*, Forum Commc’ns Co. (June 14, 2025, 3:52 PM), <https://www.inforum.com/opinion/columns/port-in-wake-of-minnesota-attacks-north-dakota-officials-scramble-to-take-down-personal-info-for-lawmakers>. It is clear a threat environment exists to public officials across the country, including at the state level in North Dakota. Given this increased threat environment, candidates and public officials may need to take security measures to ensure their personal safety while engaged in campaigning or public duties.

An expense is created when a legislator or legislative candidate takes steps to increase security measures in response to this general threat environment. This general threat environment and the

expense it creates reasonably results from running for or holding public office. Therefore, candidates or public officials may use campaign funds to respond to the general threat environment they face as detailed below.

The Commission finds the analysis by the FEC and the Arkansas Ethics Commission beneficial for analyzing North Dakota law and when it is permissible to use campaign contributions on security measures. Like these jurisdictions, the Commission determines installing or upgrading non-structural security systems, i.e., cameras, sensors, distress devices, locks, and cybersecurity software, is a prudent and permissible expense to pay for with campaign contributions to counter the general threat environment. Fed. Election Comm’n, Advisory Op. 2017-07, 3 (2017); Fed. Election Comm’n, Advisory Op. 2022-17, 3-6 (2022). Additionally, the Commission determines expenses for security personnel to protect the individual and the individual’s immediate family “while at campaign events, the campaign headquarters [if applicable], and during the candidate’s time at home” are a prudent and permissible expense to pay for with campaign contributions. Ark. Ethics Comm’n, Advisory Op. 2022-EC-002, 2 (2022). However, if a candidate or public official already pays for security expenses for reasons other than campaign or public duties, the use of campaign contributions is prohibited.

The Commission recognizes individuals may need additional security measures beyond the security measures outlined above in response to direct threats or individual and unique circumstances. In such instances, the Commission recommends those individuals submit a request for an advisory opinion to analyze whether those circumstances resulted from campaign or officeholder activities.

### **C. Fair Market Value and Other Considerations**

In addition to showing the expenses resulted from running for or holding public office, fair market value must be paid for the expenses. Under N.D.C.C. § 16.1-08.1-04.1(1)(c), a candidate or public official cannot pay more than fair market value for the goods or services when using campaign contributions. A knowing violation is a class A misdemeanor and an ethical violation. *Id.*; Mock Complaint, *supra*.

In addition to not paying over fair market value, candidates and public officials must ensure they do not underpay for goods or services. In certain instances, underpayment may be considered a prohibited lobbyist gift under N.D. Const. art XIV, § 2(1). When fair market value is exchanged, no gift occurs. *Id.*

## **IV. CONCLUSION**

The Commission answer’s Senator Boschée’s questions as follows:

1. Yes, in some instances it is a permissible campaign expenditure to pay for caregiving expenses. The candidate/public official must be able to reasonably show the expenses resulted from campaign or officeholder

activities. When permissible, the candidate/public official must pay fair market value for the expenses.

2. Due to the general threat environment faced by candidates and public officials, it is a permissible campaign expenditure to pay for security expenses, meaning non-structural security devices, cybersecurity software, and security personnel when incurred as a result of campaign activity and holding public office. When permissible, the candidate/public official must pay fair market value for the expenses.

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(6), the Commission will publish this advisory opinion on its website. The Commission thanks Senator Boschec for seeking advice regarding this issue.

This advisory opinion was approved by the Commission at a regular meeting held on June 25, 2025.

Dated this 25th day of June, 2025.



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E. Ward Koeser, Acting Chair  
North Dakota Ethics Commission