

Before the North Dakota Ethics Commission

Requested by:
Senator Ryan Braunberger

**AMENDED ADVISORY
OPINION NO. 25-02**

On April 25, 2025, the Ethics Commission (“Commission”) received an advisory opinion request from Senator Ryan Braunberger. 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. Is it permissible for a legislator to speak on a panel at the Center for Freethought Equality’s Annual Members’ Meeting outside North Dakota?
2. Under N.D. Const. art. XIV’s gift prohibition and the Commission’s rules, is it permissible for the legislator speaking at the event to accept payment for registration costs and reimbursement for travel expenses?

I. FACTUAL BACKGROUND

In the request for an advisory opinion, Senator Braunberger describes the invitation he received to speak at the Center for Freethought Equality’s Annual Members’ Meeting. The event will take place in Chicago, IL on June 27-29, 2025. The Center for Freethought Equality will reimburse Senator Braunberger’s travel expenses and cover registration costs for the event. The Annual Members’ Meeting consists of a panel discussion with Senator Braunberger and one state legislator and one former legislative candidate from other states. *In-Person CFE Members’ Meeting Registration*, Ctr. for Freethought Equal., <https://form.jotform.com/251245647489165> (last visited May 29, 2025).

In addition to speaking at the Center for Freethought Equality’s Annual Members’ Meeting, Senator Braunberger has been asked to speak at the American Humanist Association’s Annual Conference, which is occurring at the same time. Senator Braunberger will also serve on a panel for the conference. *Humanists Move America - AHACON25 Schedule*, Am. Humanist Ass’n, <https://www.conference.americanhumanist.org/schedule> (last visited June 20, 2025). Both panels Senator Braunberger will take part in will last forty-five minutes in length, for a total of ninety minutes. *Id.* According to the schedule, the American Humanist Association’s Annual Conference will feature mainstage talks, breakout sessions, and workshops focusing on community organizing, humanist living, and the role of humanism in addressing societal and political challenges. *Id.* Attendees will participate in interactive sessions on building humanist communities, preserving

humanist history, and fostering political movements based on humanist values, among others. *Id.* The conference will also have an awards ceremony and social events. *Id.*

The Center for Freethought Equality's website describes its work saying:

The Center for Freethought Equality is the advocacy and political arm of the American Humanist Association. The Center for Freethought Equality advocates for issues the humanist and atheist community cares about like the separation of church and state, protecting civil liberties, and advancing progressive policies.

When legislation is proposed that overlaps with our priorities, our members and supporters across the country are alerted and respond by contacting their lawmakers to make their voices heard. . . .

The Center for Freethought Equality compiles a scorecard in for each Congress [sic] to educate citizens about their elected officials' voting record on key issues that affect atheist and humanist Americans.

The Center for Freethought Equality also has an affiliated political action committee that works to increase the number of open humanists and atheists in public office at all levels of government.

About Us, Ctr. for Freethought Equal., <https://www.cfequality.org/about/cfe> (last visited May 29, 2025).

According to the American Humanist Association's website, the Center for Freethought Equality engages in lobbying work. It states:

The Center for Freethought Equality is a sister organization of the American Humanist Association dedicated to lobbying and political advocacy. The Center for Freethought Equality will significantly increase humanist activity in key Washington coalitions, and has established a permanent lobbyist on the Hill that will fight for issues secular Americans care about like the separation of church and state and protecting civil liberties.

When legislation is proposed at the local, state, or federal level that would restrict our individual freedoms, members and supporters are alerted and respond by contacting lawmakers in their districts to make their voices heard.

Legislative, Am. Humanist Ass'n, <https://americanhumanist.org/what-we-do/legislative/> (last visited May 29, 2025).

Because the organizations and their events are connected, it is important to consider the work of the American Humanist Association as well. Its website states:

Founded in 1941 and located in Washington D.C., the American Humanist Association advocates progressive values and equality for humanists, atheists, freethinkers, and the non-religious. The AHA has over 34,000 members and supporters and over 230 local chapter groups across the country.

With our extensive local and national media contacts, our lobbying and coalition efforts on Capitol Hill, and the efforts of our grassroots activists, we ensure that the humanist point of view is represented—the idea that you can be good without a belief in a god.

Our adjunct organizations and programs defend the Jeffersonian wall of separation between church and state (Humanist Legal Center), advance humanist thought in the realm of education (AHA Center for Education), and apply humanism to daily life (Humanist Society). Additionally, our Humanism for All Project aims to support humanist inmates in correctional institutions.

In addition to traditional media, we engage the public through a heavy online presence, which includes our profiles on Facebook, Twitter (@AmericanHumanist), Instagram, and our channel on YouTube. We also publish the award-winning magazine *The Humanist*, and breaking news and features on *TheHumanist.com*.

Our annual conference draws hundreds of humanists from across the U.S. to hear world-renowned speakers, connect with fellow nontheists and have a say in the future of the organization. We also work alongside progressive allies—both secular and religious—to work on issues of common concern.

What We Do, Am. Humanist Ass’n, <https://americanhumanist.org/what-we-do/> (last visited May 29, 2025).

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, “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) (emphasis added).

As made clear by the language of Article XIV, 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. N.D. Admin. Code ch. 115-02-01. These rules further define the terms “gift,” “lobby,” and “lobbyist.” 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).

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.

Admin. Code § 115-03-01-02(1). Reciprocally, a public official 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 general baseline 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, 115-03-01-01(3), (7), (9). For these in-state events, payment of travel expenses for a public official is permitted when 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." N.D. Admin. Code § 115-03-01-03(5). The payment of travel expenses must not exceed Office of Management and Budget Fiscal Policy #505. *Id.*

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). The Commission cannot make exceptions to Article XIV's lobbyist gift prohibition for out-of-state events. *Id.* A different analysis applies when reviewing out-of-state events.

B. Advisory Opinion 23-02

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 than 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 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.C.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.

III. ETHICS ANALYSIS

A public official may attend events out of state. However, Article XIV’s gift prohibition limits who may pay for the public official’s attendance at an out-of-state event and when. As explained

in Advisory Opinion 23-02, a public official must answer “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.” *Id.* at 5. The advisory opinion concludes, “If the answer to both of these questions is ‘yes’ then the travel expense is a prohibited gift under Section 115-03-01-02.” *Id.*

A. Gifts and the Fair Market Consideration Exclusion

In Advisory Opinion 23-02, the Commission said, “travel expenses are unquestionably gifts.” However, the full definition of gift in Article XIV means “any item, service, or thing of value *not given in exchange for fair market consideration*, including gifts or travel or recreation.” N.D. Const. art. XIV, § 2(1) (emphasis added). The constitution clearly states when given in exchange for fair market consideration, travel expenses are excluded from the definition of a gift. *Id.* Advisory Opinion 23-02 did not analyze this fair market consideration language because the public officials did not work at that out-of-state event and served only as attendees. Therefore, to clarify this previous advisory opinion, travel expenses are unquestionably gifts unless given in exchange for fair market consideration.

Here, Senator Braunberger will be working at the events by participating in panels. According to the agenda, he will be working ninety minutes during the events. By providing public speaking services at the events, Senator Braunberger is providing a service of value in exchange for travel and registration expenses. The Commission concludes these things of value are roughly equal in market value to his speaking services. Therefore, Senator Braunberger and the Center for Freethought Equality will exchange fair market consideration, and the travel and registration expenses do not meet the definition of a gift in Article XIV.

B. Lobbying Must Not Occur to Accept Additional Items, Services, or Things of Value

The Commission cautions Senator Braunberger from accepting additional items, services, or things of value while at the events. While serving as an attendee, Senator Braunberger may be offered additional things of value by the host organizations but not in exchange for his speaking services. If offered these additional things of value, Senator Braunberger must look to the motivations of the hosts and the programming at the events to make the determination if they are lobbying and if he can accept.

According to the Center for Freethought Equality, it is an organization “dedicated to lobbying and political advocacy.” It is less clear if the organization will engage in this “lobbying” at the event, and whether the organization’s use of the term lobbying is synonymous with the Commission’s definition. However, the programming of the event also appears to “present information from a particular perspective” and is “consequently more subjective.” N.D. Ethics Comm’n, Advisory Op. 23-02, 6 (2023). The Center for Freethought Equality and the American Humanist Association certainly “have an agenda that aligns with a political, social, or educational agenda.” *Id.* Therefore, if additional things of value are offered, careful analysis of whether the organizations are lobbying at the events under the Commission’s definition is required.

Because of the structure of the organizations, their general motivations, and the agenda for the entire schedule of events, the analysis must turn to the five factors outlined in Advisory Opinion 23-02 for a “more subjective” out-of-state event. Based on the information available to the Commission, two factors appear to focus more on education rather than influencing public official action or decision: (2) the topics of presentations, panel discussions, and social occasions; and (3) communications to date. On its face, the agenda for the events appears focused on providing education. However, the schedule for the American Humanist Association’s Annual Conference does not provide a complete description of all the presentations taking place during the event. It also does not list biographies for every presenter. Therefore, it is unclear whether all the presentations and events will take an educational approach instead a lobbying approach.

The Commission has very little information to discern the remaining three factors: (1) the overarching objectives; (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. While the events may appear to focus on education, the Center for Freethought Equality has an express dedication to “lobbying and political advocacy” as the “advocacy and political arm” of the American Humanist Association. This initiative demonstrates an intent to more widely influence public officials’ actions and decisions. As a result, it is difficult to determine the true overarching objectives at the events and whether lobbying will occur.

Because the Commission is unable to analyze the five factors in full, Senator Braunberger must take caution when deciding whether to accept anything unrelated to his speaking services. In this instance, whether the organizations are lobbying will likely be made clear based on the content of their communications and materials provided during the events he attends solely as an attendee. Senator Braunberger must assess those presentations on a case-by-case basis and analyze the content to determine if lobbying is indeed occurring. If so, acceptance of additional things of value is prohibited by Article XIV of the North Dakota Constitution. In that instance, Senator Braunberger must refuse to accept the thing of value or pay fair market value for it in accordance with N.D. Admin. Code § 115-03-01-02. N.D. Ethics Comm’n, Advisory Op. 23-02, 6 (2023).

IV. CONCLUSION

The Commission answers Senator Braunberger’s questions as follows:

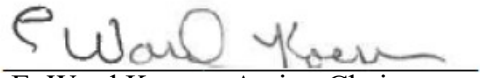
1. A public official may attend an event out of state, including speaking on a panel at the Center for Freethought Equality’s Annual Members’ Meeting. However, a public official must not accept a prohibited lobbyist gift.
2. It is permissible for Senator Braunberger to accept travel and registration costs for the events at issue. He will provide fair market consideration by speaking at the events in exchange for the costs. The Commission cautions Senator Braunberger to assess the events for lobbying if he is offered additional things of value.

The Commission amended this advisory opinion from the original version provided to Senator Braunberger to review and analyze the fair market consideration exclusion. Please note the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and court orders or opinions. Until and unless subsequent developments in the law occur, criminal and civil penalties may not be imposed upon an individual for an action taken in accordance with this advisory opinion when: (1) the individual acts in good faith; and (2) the material facts surrounding the action taken are substantially the same as the conduct presented in the opinion. N.D.C.C. § 54-66-04.2(4).

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

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

Dated this 25th day of June, 2025.



E. Ward Koeser, Acting Chair
North Dakota Ethics Commission