

Before the North Dakota Ethics Commission

Requested by:
Representative Dawson Holle

ADVISORY OPINION NO. 24-03

On December 9, 2024, the Ethics Commission (“Commission”) received an advisory opinion request from Representative Dawson Holle. Based on its review of the request, the Commission decided to issue an advisory opinion pursuant to N.D.C.C. § 54-66-04.2. The question presented to the Commission for consideration is summarized below.

1. Would a brand partnership, such as gaining social media followers and receiving a pair of jeans from Wrangler, constitute a “political gain” under applicable North Dakota law?

I. FACTUAL BACKGROUND

For purposes of this advisory opinion, the hypothetical facts proposed by Representative Holle are as follows: Representative Holle is a dairy farmer who may receive an offer from Wrangler to collaborate on a clothing promotion through social media. Under the proposed hypothetical arrangement, Representative Holle would promote Wrangler jeans by endorsing their comfort and suitability for dairy farmers. After the promotional post goes live on social media, Representative Holle would be tagged and potentially gain followers. The proposed hypothetical compensation would be limited to receiving a pair of jeans. Representative Holle seeks guidance on whether this type of social media promotion and the associated benefits, the follower growth and complimentary jeans, would constitute a private or political gain under applicable North Dakota law.

II. LEGAL BACKGROUND

The phrase “political gain” is not used in the North Dakota Century Code. However, to provide guidance to Representative Holle as requested, the Commission looks to three areas of law: (1) lobbying; (2) campaign contributions; and (3) use of office for private gain and conflicts of interest.

A. Lobbying

1. 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.”

2. North Dakota Century Code Provisions

Following its constitutional directive, during the 2019 legislative session the Legislative Assembly created civil penalties for a violation of N.D. Const. art. XIV, § 2(1).¹ 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.

¹ 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.

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).

State law in the North Dakota Century Code also prohibits other conduct regarding bribery and lobbying. Chapter 12.1-12, N.D.C.C., prohibits bribery in various circumstances. Section 54-05.1-06, N.D.C.C., states:

In addition to the violation of any other provision of this chapter, it is unlawful for any lobbyist or for any other person:

1. To directly or indirectly give or agree to give any money, property, or valuable thing, or any security therefor, to any person for that person's service or the service of any other person in procuring the passage or defeat of any measure before the legislative assembly or either house thereof, or before any committee thereof, upon the contingency or condition that any measure will be passed or defeated.
2. To directly or indirectly receive or agree to receive any such money, property, thing of value, or security for such service, upon any such contingency or condition, as set forth in the preceding subsection.
3. To attempt to influence any member of the legislative assembly without first making known to such member the real and true interest the person has in such measure, either personally or as agent or attorney.

N.D.C.C. § 54-05.1-06.

3. Ethics Rules

In 2020, to fulfill its constitutional directive, 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 "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).

Notably, 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.

The 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.

B. Campaign Contributions

State law directs how candidates for office may use campaign contributions. *See generally* N.D.C.C. ch. 16.1-08.1. A “contribution” is defined as:

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.

N.D.C.C. § 16.1-08.1-01(4).

Section 16.1-08.1-04.1, N.D.C.C., prohibits the use of a campaign contribution for a personal benefit. A “personal benefit” is a “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).

C. Use of Office for Private Gain and Conflicts of Interest

Other jurisdictions prohibit the use of public office for private gain. *E.g.*, 5 C.F.R. § 2635.702

(2024) (prohibiting the use of public office for private gain at the federal level, including endorsements unless certain conditions are met); Okla. Ethics Rule 4.4 (“[A] state officer or employee shall not use his or her State office (1) for his or her own private gain, (2) for the endorsement of any product, service, or enterprise”); W. Va. Code § 6B-2-5(b) (“A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.”). Currently, North Dakota does not have a similar statute or ethics rule prohibiting use of public office for private gain. However, North Dakota does have statutes prohibiting bribery, as noted above, and use of government property for political purposes. N.D.C.C. ch. 12.1-12; N.D.C.C. § 16.1-10-02.

While not in statute or ethics rule, the North Dakota Legislative Assembly has adopted a rule that recognizes the importance of not using one’s legislative office for private gain. It states:

The resolution of ethical problems must rest largely in the individual conscience. The Legislative Assembly may and should, however, defined ethical standards, as most professions have done, to chart the areas of real or apparent impropriety. Unless otherwise provided by law, no criminal penalty applies to a member who engages in conduct that is inconsistent with this section. However, in striving to maintain ethical standards, each member should recognize the importance of:

....

- (6) Not using the member’s official position to obtain financial gain for the member, the member’s family, or a business associate or to secure privileges or exemptions in direct contravention of the public interest.

Joint Rule 1002, 69th Legis. Assemb. Manual (N.D. 2025).

In 2022, the Commission adopted ethics rules requiring public officials to disclose and manage conflicts of interest. The rules apply to all public officials, as defined by N.D. Const. art. XIV, § 4(2). The conflict-of-interest rules require public officials to disclose known potential conflicts of interest when the “public official as part of the public official’s duties must make a decision or take action in a matter.” N.D. Admin. Code §§ 115-04-01-01(2), 115-04-01-02(2). A potential conflict of interest can exist when a public official has “received a gift from one of the parties,” “a significant financial interest in one of the parties or in the outcome of the proceeding,” or “a relationship in a private capacity with one of the parties.” N.D. Admin. Code §§ 115-04-01-01(2), 115-04-01-02(2).

A “significant financial interest” is defined as “a direct and substantial in-kind or monetary interest, or its equivalent, not shared by the general public; however, [it] does not include investments in a widely held investment fund, such as mutual funds, exchange-traded funds, participation in a public employee benefits plan, or lawful campaign contributions.” N.D. Admin. Code § 115-04-01-01(8).

A “relationship in a private capacity” is defined as:

a past or present commitment, interest or relationship of the public official in a matter involving the public official's immediate family, individual's residing in the public official's household, the public official's employer, or employer of the public official's immediate family, or individuals with whom the public official has a substantial and continuous business relationship.

N.D. Admin. Code § 115-04-01-01(7).

Once a public official identifies and discloses a potential conflict of interest, the public official can either recuse or use the Commission's neutral reviewer process to evaluate the potential conflict. N.D. Admin. Code §§ 115-04-01-02(5), 115-04-01-03. The default individual(s) serving as the neutral reviewer is (are) identified in the Commission's rules. N.D. Admin. Code § 115-04-01-01(5). If the neutral reviewer process is used, the neutral reviewer evaluates whether a potential conflict of interest creates a disqualifying conflict of interest. N.D. Admin. Code § 115-04-01-03(2). To make the determination if a potential conflict of interest creates a disqualifying conflict of interest, the neutral reviewer must analyze five standards. N.D. Admin. Code § 115-04-01-03(7).

The neutral reviewer can conclude with one of two options:

- (1) the potential conflict of interest does not constitute a disqualifying conflict of interest, and the public official may participate in the matter; or
- (2) the potential conflict of interest does constitute a disqualifying conflict of interest, and the public official shall recuse himself and abstain from participating in the matter.

N.D. Admin. Code § 115-04-01-03(3).

Following the neutral reviewer's decision, a public official is required to fill out and file the Commission's online form to create a record of the disclosure and management of the potential conflict of interest. N.D. Admin. Code § 115-04-01-04; *see also* N.D. Ethics Comm'n Advisory Op. 23-01 at 9 (stating legislators may but do not need to submit the Commission's form because the Legislative Assembly has journal entries and video recordings documenting conflict of interest disclosures). Under the Commission's rules, "Any agency, office, commission, board, or entity subject to these rules may adopt conflict of interest rules that are more restrictive than these rules but may not adopt conflict of interest rules that are less restrictive." N.D. Admin. Code § 115-04-01-05.

The North Dakota House of Representatives updated its conflict-of-interest rules for the 2025 legislative session. The rules require disclosure of potential conflicts of interest, which the Legislative Assembly calls a personal or private interest. The rules state:

1. Every member who is present, before the vote is announced from the chair, shall vote for or against the question before the House, unless the House excuses the member.
2. Any member who may have a personal or private interest in any measure shall disclose the fact to the House and may abstain from voting thereon with the consent of the House.
3. A “personal or private interest” is an interest that affects the member directly, individually, and uniquely.
 - a. “Directly” means immediately or without additional intervening action or decision.
 - b. “Individually” means for a reason other than belonging to a group, including as a member of a profession, occupation, industry, region, or the general public.
 - c. “Uniquely” means in a way that is distinct from the general public.
4. If a member inadvertently fails to disclose a personal or private interest, the member may report the failure to disclose to the Speaker not later than twenty-one days after the conflict arises. The Speaker shall report a summary of the failure to disclose on the floor, if possible. The disclosure must be recorded in the journal.

House Rule 321, 69th Legis. Assemb. Manual (N.D. 2025).

III. ETHICS ANALYSIS

A. Lobbying Analysis

The question presented by Representative Holle proposes a pair of jeans is offered by Wrangler in exchange for promotion by Representative Holle. According to this hypothetical fact pattern, Representative Holle would promote the jeans as a great jean for dairy farmers because they are comfortable.² When offering a service that meets the items value, such as the promotion for the jeans, in exchange for the item, a gift under Article XIV’s prohibition does not occur. Things of value “given in exchange for fair market consideration” are excluded from the definition of a lobbyist gift. N.D. Const. art. XIV, § 2(1). Because these items are excluded from the gift prohibition, the Commission need not determine whether Wrangler is considered a lobbyist.

Nonetheless, a public official must remain cognizant that any service or payment for a thing of value, needs to align with the current fair market consideration. If the public official underpays or renders services not equaling the full value, a lobbyist gift can occur. A public official must also ensure he or she is not accepting a bribe by exchanging an official action or duty for the item. *See*

² The Commission takes notice of the Legislative Assembly’s practice limiting wearing blue jeans on a chamber’s floor. *ND governor kicked off Senate floor for wearing jeans*, INFORUM, (Feb. 16, 2017, 2:36 PM), <https://www.inforum.com/news/nd-governor-kicked-off-senate-floor-for-wearing-jeans>. The Commission anticipates a legislator would not wear blue jeans on the floor of the legislator’s chamber.

N.D.C.C. ch. 12.1-12. Similarly, the public official must ensure the item is not offered in exchange for assistance promoting or defeating legislation. N.D.C.C. § 54-05.1-06.

The hypothetical facts presented state the jeans are offered in exchange for the social media promotion by Representative Holle and not for his official action as a legislator. By not invoking official government action in exchange for the jeans, the facts presented do not implicate the bribery statutes and N.D.C.C. § 54-05.1-06. Additionally, if Representative Holle’s promotion of the jeans creates enough value to pay for them, the jeans would not be considered a gift under Article XIV.

B. Campaign Contributions

Candidates for office must follow campaign finance laws when receiving campaign contributions. The facts presented do not indicate the brand partnership with Wrangler would be made “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.” N.D.C.C. § 16.1-08.1-01(4). However, if the facts change, the campaign finance provisions are also important considerations. Similar to the analysis for lobbyist gifts, exceptions exist when fair market value is exchanged. *Id.*

C. Use of Office for Private Gain and Conflicts of Interest

While North Dakota does not have a statute or ethics rule generally prohibiting use of office for private gain, the Legislative Assembly does have a rule. Joint Rule 1002 directs legislators to recognize the importance of “[n]ot using the member’s official position to obtain financial gain for the member, the member’s family, or a business associate or to secure privileges or exemptions in direct contravention of the public interest.” Joint Rule 1002, 69th Legis. Assemb. Manual (N.D. 2025). Legislators should remain cognizant of their rules when considering brand partnerships.

Additionally, if Representative Holle were to accept a hypothetical brand partnership with Wrangler he may be presented with potential conflicts of interest in the legislature if legislation impacts Wrangler. The potential conflict of interest determination will depend on the substance of the legislation and would require a case-by-case analysis by Representative Holle.

IV. CONCLUSION

The Commission answers Mr. Holle’s question as follows:

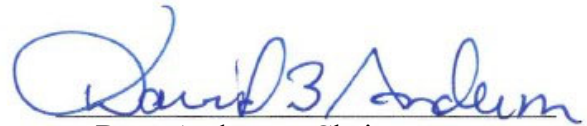
1. A brand partnership with Wrangler would not meet the definition of a prohibited lobbyist gift, so long as the exchanged value meets fair market consideration.
2. Public officials must remain cognizant of other laws prohibiting bribery and similar conduct, campaign finance laws, and conflict of interest disclosure requirements.

3. Legislators must also recognize their own rules, including Joint Rule 1002, when considering brand partnerships.

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

This advisory opinion was approved by the Commission at a special meeting held on March 7, 2025.

Dated this 7th day of March, 2025.



Dave Anderson, Chair
North Dakota Ethics Commission