



Dakota Dilemmas:

Lobbyist Gifting:

Naughty or Nice?



ND | ETHICS
COMMISSION

Agenda



01 Article XIV

02 Constitutional Prohibition

03 Commission-Created Exceptions

04 Potential Penalties & Remedies

A Constitutional Amendment

2018 General Election

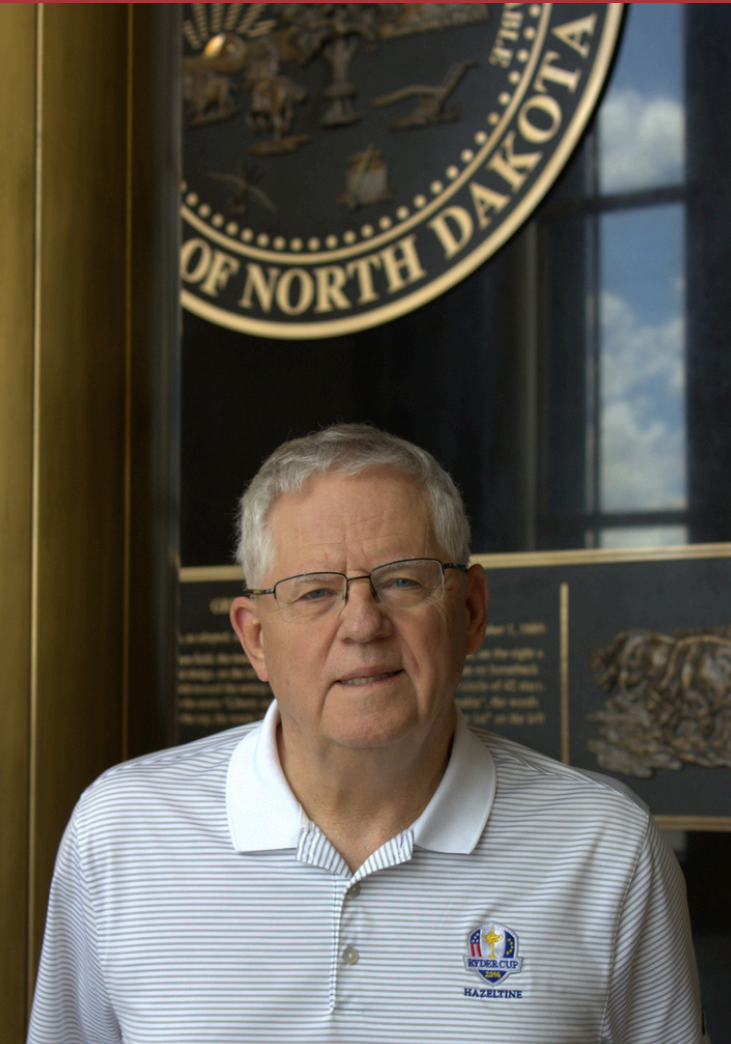
Established state ethics commission in
Article XIV of the North Dakota
Constitution

Commission has authority over
transparency, corruption, elections, and
lobbying

The logo for the ND Ethics Commission is displayed in white text on a dark red background. It consists of three lines of text: 'ND' in a large, bold, sans-serif font; 'ETHICS' in a smaller, bold, sans-serif font; and 'COMMISSION' in a smaller, all-caps, sans-serif font. A vertical line with small square markers at both ends is positioned to the left of the logo, extending from the top of the 'ND' text down to the bottom of the 'COMMISSION' text.

ND
ETHICS
COMMISSION

Members of the Ethics Commission



Vice-Chair
Ward Koeser

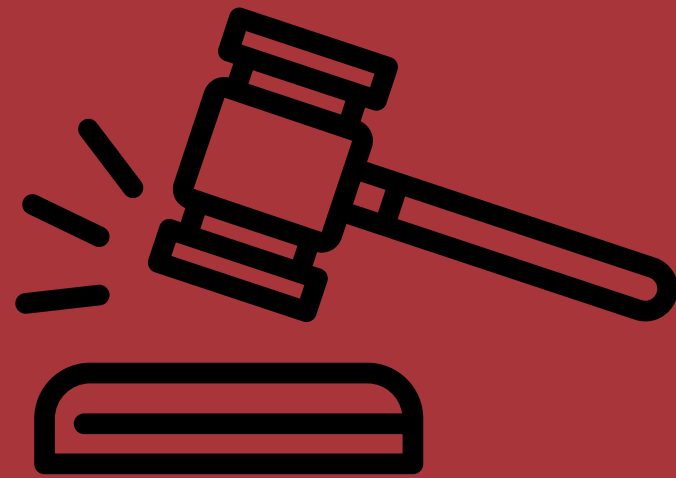
Commissioner
Murray Sagsveen

Commissioner
Ron Goodman

Commissioner
Dr. Cynthia Lindquist

Chair
David Anderson

Commission Rules



The Complaint Process

Lobbyist Gifts

Appearance of Bias

Conflicts of Interest

Financial and Travel Disclosure??

Rulemaking Authority



Ethics Commission authority - transparency, corruption, elections, and lobbying

Attorney General Opinion 2020-L-09

Read rules in harmony when reasonable and workable.

Conflict with other ethics rules?

Ethics Commission rules prevail.

City of Fargo v. Ruether, 490 N.W.2d 481 (N.D. 1992).

Rulemaking Process

Ethics Commission \neq Administrative Agency

Administrative Agencies Practice Act
includes the Ethics Commission for specific sections

“Agency” and “commission”

Proposed Rule \rightarrow Notice \rightarrow Comments and Hearing
 \rightarrow Respond to Comments \rightarrow Final Approval \rightarrow
Publication



Lobbyist Gifts Prohibited

Article XIV

“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 = thing of value not given in exchange for fair market consideration



SHSND 00056

Governor Sinner 1989

Who is a Public Official?



SHSND 00114

Governors Sinner, Link, Olson, and Guy 1985

Public Official =

- elected or appointed members of legislative and executive branches
- members of the Ethics Commission
- legislative employees

Does NOT include: Judicial branch employees, local officials, or non-appointed executive branch employees

Who is a Lobbyist?



Exclusions:

legislators, private citizens appearing on own behalf, government employees, individual invited to provide info, and business representatives introduced by a lobbyist

Includes:

Registered Lobbyists

and

Individuals who attempt to influence your actions or decisions.

Commission Creates Exceptions

Constitution directs Commission to create 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, 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.”



Public or Private Events



SHSND 00005

Party at the Hotel McKenzie Dining Room
1910

Public social and educational event
or
Private social and educational event

Exceptions to the lobbyist gift prohibition largely focus on providing food for immediate consumption only.

Need:

- (1) educational component
- (2) person who is not a registered lobbyist or a public official
- (3) notice filed with the Ethics Commission by event sponsor

Educational Component

Advisory Opinion 22-02



“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.”

Best practice: Presentation outlining the topic, issue, or problem with analysis by the lobbyist.

Event Notice



SHSND 31843

Governor and Nancy Schafer at Christmas tree lighting
in the Memorial Hall
ND State Capitol December 1996

The Ethics Commission does NOT approve events.

Please request an advisory opinion in advance if
you would like the Ethics Commission's review.

Informal Events



SHSND 00732

Legislators on a Coffee Break
1959

Informal social and educational events allowed
Food or beverage for immediate consumption

\$10 limit, excluding gratuity

Lobbyist can purchase \$10 food and drink item(s)

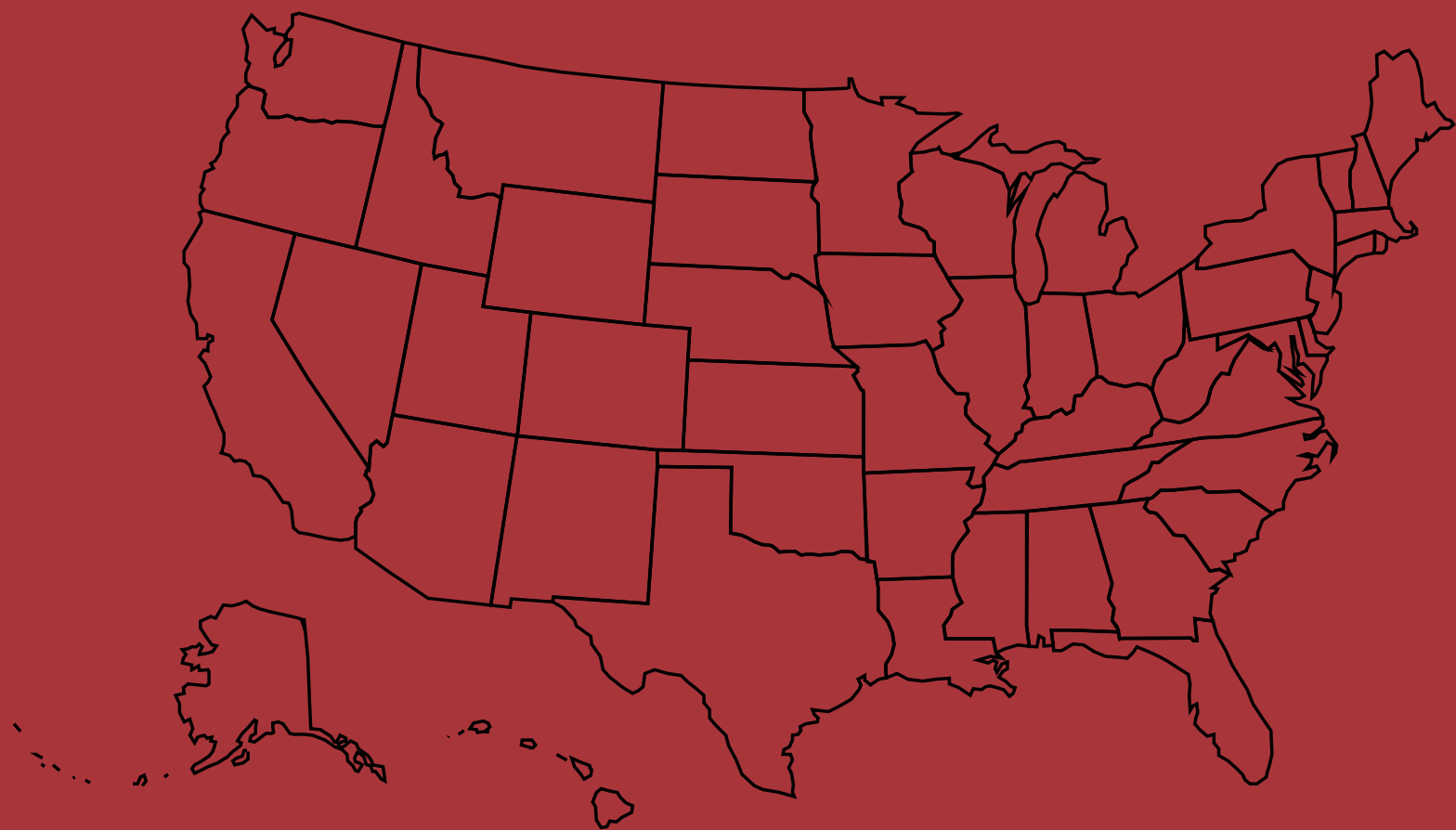
Additional Exceptions

- (1) A gift by a lobbyist who is a member of the public official's immediate family
- (2) Any item where the public official pays fair market value
- (3) Purely informational material
- (4) A campaign contribution



Out-of-State Events

Commission exceptions only apply in North Dakota.



Advisory Opinion 23-02:
Recognizes a spectrum of
out-of-state events

Factors to Consider:

- (1) Overarching objectives
- (2) Topics of presentations
- (3) Scope and type of invitees
- (4) Materials provided
- (5) Communications received

Gifting Recap



- (1) Ethics Commission exceptions apply only in-state.
- (2) Food and drink = for immediate consumption only, must have educational component
- (3) Reimbursement by sponsor? Must be working beyond attending to learn and eat.

Inadvertent Acceptance

OOOPS!



Commission recognized inadvertent giving or receiving a prohibited gifts.

To Remedy:

- o Return gift unused within 10 days,
OR
- o Pay market value for the gift within
10 days.

Penalties for Violations

Set by the Legislature
during 2019 Session

Ethics Commission
assesses civil penalties

Civil penalty up to 2 times
the value of the gift



Questions?





*Thank
you!*

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or

701.328.5325

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