

**LETTER OPINION  
2004-L-52**

August 3, 2004

Ms. Kathleen Trosen  
Harvey City Attorney  
120 9th St W  
Harvey, ND 58341-1505

Dear Ms. Trosen:

Thank you for your letter asking several questions concerning security at dances under N.D.C.C. § 53-02-08. It is my opinion that N.D.C.C. § 53-02-08 provides authority for the sheriff or a city police chief to require security at certain public events, including dances, but not at private events.

**ANALYSIS**

State law provides for the limited regulation of public dances, music festivals, and public concerts. N.D.C.C. ch. 53-02. Principally, a city police chief, or county sheriff for events held outside an incorporated city, has jurisdiction to police a public dance, music festival, or public concert to maintain law and order. N.D.C.C. § 53-02-08. The person conducting the event must give notice to the sheriff or city police chief. Id. The sheriff or police chief may specify the number of peace officers or private security officers necessary for the event. Id. Any required private security officer or peace officer must be present (and expenses prepaid) before the event may be held. Id.

Your first questions concern the statute's applicability to a private dance and what qualifies as a private dance. Section 53-02-08, N.D.C.C., applies to three events: a public dance,<sup>1</sup> a music festival, and a public concert. A public dance means "any dance where the public may participate and is present primarily for the sole purpose of dancing and where the location of the dance has a capacity of at least one hundred people." N.D.C.C. § 53-02-01(4). A public dancing place means "a room, place, or space, which has a capacity of at least one hundred people, open to public patronage where dancing

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<sup>1</sup> The first and last sentences of section 53-02-08 refer to jurisdiction over a "public dance," but other references within this same statute use the word "dance" without the qualifying adjective "public." It is reasonable to construe all references to a dance in section 53-02-08 as references to a public dance which is defined by N.D.C.C. § 53-02-01(4). Johnson v. Workers' Comp., 484 N.W.2d 292, 295 (N.D. 1992).

in which the public may participate is carried on and where the public is present primarily for the sole purpose of dancing.” N.D.C.C. § 53-02-01(5). The other regulated events, music festivals and public concerts, are also defined in terms of an audience being present primarily for the purpose of listening to music, and imply that the general public is invited to attend. N.D.C.C. § 53-02-01(1), (3). Therefore, it is my opinion that the authority to require security officers to be present at a dance under N.D.C.C. § 53-02-08 only applies to public dances where the public may participate, and not private dances to which the general public has not been invited. N.D.A.G. Letter to Hill (July 5, 1990), N.D.A.G. Letter to McLean (Apr. 19, 1983).

Whether a dance is “public” is a question of fact.<sup>2</sup> N.D.A.G. Letter to Hill (July 5, 1990). As this office previously stated, if members of the public are allowed to participate in a dance held at a private club, it is a public dance subject to N.D.C.C. § 53-02-08. N.D.A.G. Letter to McLean (Apr. 19, 1983).

You also ask whether a public dance may be held without a security officer.<sup>3</sup> Section 53-02-08, N.D.C.C., allows the sheriff or police chief to “determine the number, if any, of” officers needed to police the event. (Emphasis added). Thus, security officers are needed only if the sheriff or police chief determines it to be necessary. Although other sentences in section 53-02-08 state that the event may not be permitted to proceed if the officer or officers are not present, those requirements apply only if the decision has been made to require officers to be present.

The decision as to the number of officers, if any, which are required to be at the event should be made in the sheriff or police chief’s informed good judgment. The location of the event, the number of people expected to attend, any past history at this type of event or similar events, the presence of alcoholic beverages, the preventative effect of the presence of an officer, or any other reasonably relevant considerations may be taken into account when determining whether an officer or officers are required, and if so, how many.

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<sup>2</sup> The facts and circumstances surrounding each dance must be examined to determine whether that dance is “public” or “private.” For instance, a wedding dance or anniversary party might be considered a private dance. But if the public is invited (for example, an ad in the paper inviting the general public to attend the dance or party, or an open invitation to persons who were not invited wedding or party guests; i.e., walk-ins), it may, in fact, be a public dance. It will still have to meet the participant number and room capacity requirements. A dance is not “public” if the room holds less than 100.

<sup>3</sup> The security officer may be a deputy sheriff, a special peace officer, or a licensed private security officer. N.D.C.C. § 53-02-08.

You asked why security is or is not required at private dances. As noted earlier, N.D.C.C. § 53-02-08 does not create a statutory duty to provide security at private dances. In addition, unless a special relationship exists, there is no common law duty to provide police protection to specific individuals or groups; the duty is a general duty<sup>4</sup> owed to the public as a whole. Licia A. Esposito, Annotation, Liability of Municipality or Other Governmental Unit for Failure to Provide Police Protection from Crime, 90 A.L.R. 5th 273, § 3 (2001). See also Bruttomesso v. Las Vegas Metropolitan Police Dept., 591 P.2d 254 (Nev. 1979) (the police commission had no duty to provide police protection at a Beatles film festival and was therefore not liable for its failure to do so); Mastbergen v. City of Sheldon, 515 N.W.2d 3, 5 (Iowa 1994). The refusal to recognize a particularized duty to protect individuals is “grounded on the belief that law enforcement owes a general duty to the public and the imposition of liability would jeopardize continued vigorous police work.” Mastbergen, 515 N.W.2d at 4. Further, the “provision of police protection . . . has long been regarded as a resource-allocating function that is better left to the discretion of the policy makers.” Cuffy v. City of New York, 513 N.Y.S.2d 372, 374 (N.Y. 1987).

Finally, you ask about liability for criminal violations at dances held in rented halls, such as violations of state liquor laws. An alcoholic beverage retail license holder has certain affirmative duties, including preventing individuals below the age of 21 from being present in certain areas where alcoholic beverages are dispensed or consumed, such as a bar or the bar portion of a restaurant and bar. State v. Smokey’s Steakhouse, Inc., 478 N.W.2d 361 (N.D. 1991). See also N.D.C.C. chs. 5-01 and 5-02 (regarding alcoholic beverage retail licensing laws). There is no statutory basis to transfer these duties from the license holder to a patron merely because the patron has booked all of part of the licensed establishment. It is only if the patron commits an illegal act, or aids and abets in a crime, that the patron might also be charged. N.D.C.C. §§ 12.1-02-01, 12.1-03-01, 12.1-06-02, 12.1-06-04. See generally, 45 Am. Jur.2d Intoxicating Liquors, §§ 253 et seq., 282 et seq. (1999).

Sincerely,

Wayne Stenehjem  
Attorney General

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<sup>4</sup> Under certain circumstances, a statute may create a specific duty to protect a person or persons. 90 A.L.R. 5th 273, § 4.

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This opinion is issued pursuant to N.D.C.C. §54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).