

**LETTER OPINION
2015-L-10**

December 31, 2015

The Honorable Ben Hanson
House of Representatives District 16
921 31st Ave W
West Fargo, ND 58078-8265

Dear Representative Hanson:

Thank you for your letter requesting my opinion on whether local governing bodies may permit the serving of alcoholic beverages between 11 a.m. and noon on Sundays. For the following reasons, it is my opinion that local governing bodies may permit the serving of alcoholic beverages between 11:00 a.m. and noon on Sundays.

ANALYSIS

Before the 2015 legislative session, state law did not allow alcoholic beverages to be served before noon on Sundays. In the 2015 legislative session, the Legislature heard testimony from the primary sponsor of House Bill 1434, Representative Marie Strinden, indicating that the purpose of the bill was to allow local governing bodies to authorize the dispensing of alcoholic beverages before noon on Sundays so those engaged in dispensing of alcohol would be competitive with businesses in the surrounding states and Canadian province, all of which allow alcoholic beverages to be served before noon on Sundays.¹ The 2015 Legislature approved the bill, thus N.D.C.C. § 5-02-05 now allows a business to serve alcoholic beverages after 11 a.m. on Sundays.²

After the 2015 legislative session, it became evident that N.D.C.C. § 5-02-05.1 should also have been amended in order to maintain consistency in the chapter concerning retail licensing of alcoholic beverages. Section 5-02-05.1, N.D.C.C., relates to the issuance of

¹ Hearing on H.B. 1434 before the House Comm. on Indus., Bus., and Labor, 2015 N.D. Leg. (Jan. 28) (Testimony of Rep. Strinden).

² N.D.C.C. § 5-02-05 provides, in part: “A person may not dispense or permit the consumption of alcoholic beverages on a licensed premises between two a.m. and eleven a.m. on Sundays, between the hours of two a.m. and eight a.m. on all other days of the week, or on Christmas Day or after six p.m. on Christmas Eve.”

Sunday alcoholic beverage permits by local governing bodies, such as cities and counties.³ It states, in part:

A local governing body may permit dancing and the distribution of alcoholic beverages between the hours of twelve noon on Sunday and two a.m. on Monday.⁴

This language indicates that a local governing body may not permit the serving of alcoholic beverages before noon on Sundays.

The question raised is whether the recent amendment of N.D.C.C. § 5-02-05, authorizing the serving of alcoholic beverages after 11 a.m. on Sundays, impliedly amends or repeals the language in N.D.C.C. § 5-02-05.1 that indicates local governing bodies may not permit the serving of alcoholic beverages before noon on Sundays.

Implied amendments and implied repeals are not favored.⁵ However, if there is an irreconcilable conflict between the new law and the old law, the old law will be impliedly amended or repealed, and the latest enactment of the Legislature will prevail.⁶

It is my opinion that N.D.C.C. § 5-02-05.1, which indicates local governing bodies may not permit the serving of alcoholic beverages before noon on Sundays, is irreconcilable with the recently-amended N.D.C.C. § 5-02-05, which authorizes the serving of alcoholic beverages after 11 a.m. on Sundays. The provision that was enacted in the 2015 legislative session, which amended N.D.C.C. § 5-02-05 to authorize the serving of alcoholic beverages after 11 a.m. on Sundays, reflects the most recent intent of the Legislature, and therefore prevails.⁷

³ “‘Local governing body’ means the governing entity of a city, county, or federally recognized Indian tribe in this state.” N.D.C.C. § 5-01-01(12).

⁴ N.D.C.C. § 5-02-05.1(3).

⁵ See Tharaldson v. Unsatisfied Judgment Fund, 225 N.W.2d 39, 45 (N.D. 1974), Birst v. Sanstead, 493 N.W.2d 690, 694 (N.D. 1992).

⁶ See Kessler v. Bd. of Educ. of City of Fessenden, 87 N.W.2d 743, 752 (N.D. 1958), Tharaldson v. Unsatisfied Judgment Fund, 225 N.W.2d 39, 45 (N.D. 1974), Bartels v. City of Williston v. Hackney, 276 N.W.2d 113, 121 (N.D. 1979), Birst v. Sanstead, 493 N.W.2d 690, 695 (N.D. 1992), and Bismarck v. Fettig, 601 N.W.2d 247, 253 (N.D. 1999) (citing N.D.A.G. 96-F-08).

⁷ See Kessler v. Bd. of Educ. of City of Fessenden, 87 N.W.2d 743, 752 (N.D. 1958), Bartels v. City of Williston v. Hackney, 276 N.W.2d 113, 121 (N.D. 1979), and Bismarck v. Fettig, 601 N.W.2d 247, 253 (N.D. 1999). See also N.D.A.G. 88-1, N.D.A.G. 86-24, and N.D.C.C. 82-32.

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In conclusion, it is my opinion that local governing bodies may permit the serving of alcoholic beverages starting at 11 a.m. on Sundays.

I would recommend that the inconsistency in N.D.C.C. ch. 5-02 should be addressed by the Legislature during the next legislative session.

Sincerely,

Wayne Stenehjem
Attorney General

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.⁸

⁸ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).