

LETTER OPINION
96-L-73

April 16, 1996

Mr. R. James Maxson
Velva City Attorney
600 22nd Avenue NW
Minot, ND 58703

Dear Mr. Maxson:

Thank you for your letter requesting my opinion on whether it is legal for a licensed establishment which serves both alcoholic beverages and food to remain open after 1:00 a.m. for the sole purpose of serving food, but no alcoholic beverages.

N.D.C.C. § 5-02-05 provides:

Any person who dispenses or permits the consumption of alcoholic beverages on licensed premises after one a.m. on Sundays, before twelve noon on Sundays, or between the hours of one a.m. and eight a.m. on all other days of the week, or who dispenses alcoholic beverages or permits consumption of alcoholic beverages on licensed premises on Christmas Day, after one a.m. on Thanksgiving Day, or after six p.m. on Christmas Eve is guilty of a class A misdemeanor.

The prohibitions found in the above section only relate to the dispensing and consumption of alcoholic beverages, not whether a licensed establishment may remain open. N.D.C.C. § 5-02-05 does not require that licensed establishments close after 1:00 a.m.; it simply requires that alcoholic beverages not be dispensed or consumed on licensed premises after 1:00 a.m. Accordingly, N.D.C.C. § 5-02-05 does not prohibit a licensed establishment from remaining open and serving food after 1:00 a.m., as long as alcoholic beverages are not dispensed or consumed on the licensed premises.

N.D.C.C. §§ 5-01-08 and 5-02-06 relate to this question to the extent a person under the age of 21 years may enter the licensed establishment. Those sections prohibit a person under the age of 21 from entering a licensed premises where alcoholic beverages are "being sold or displayed." Thus, although a licensed establishment may remain open and serve food after 1:00 a.m. if alcoholic beverages are not dispensed or consumed on the licensed premises, a person under the age of 21 may not enter the premises if alcoholic beverages

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are displayed. If the licensed establishment is a restaurant within the meaning of N.D.C.C. §§ 5-01-08 and 5-02-06, this should not create a problem if the dining area is separated from the bar area or if the person under 21 years of age is accompanied by a parent or guardian.

Although state law does not prohibit a licensed establishment from remaining open after 1:00 a.m. for the sole purpose of serving food, it should be noted that pursuant to N.D.C.C. §§ 5-02-09 and 40-05-01(29), local governing bodies may, by ordinances or resolution, adopt more restrictive regulations than state law. It is, therefore, necessary to examine the local governing body's regulations to determine whether they impact this issue.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

dab/tmb