

N.D.A.G. Letter to Larson (Jan. 3, 1990)

January 3, 1990

Honorable Diane Larson
State Representative
413 Cambridge
Bismarck, ND 58504

Dear Representative Larson:

Thank you for your recent letter requesting an opinion concerning a portion of N.D.C.C. § 5-02-05.1 which allows the issuance of a special Sunday event alcoholic beverage permit.

N.D.C.C. § 5-02-05.1(4) states that the special Sunday alcoholic beverage permit may not be issued for gatherings or meetings which, "in the opinion of the governing body of the city or county, are primarily local in nature." In your letter, you note that the phrase "primarily local in nature" is ambiguous and is in need of further definition or refinement. However, if additional guidance is needed in determining those gatherings or meetings which are primarily local in nature, such standards must come from the Legislature rather than this office.

Enclosed is a copy of an Attorney General's opinion I issued to Senator John Olson concerning the special Sunday alcoholic beverage permit law. In that opinion, I repeated in detail portions of the legislative history surrounding the enactment of this law which evinces a clear and unmistakable legislative intent to give local governing bodies the sole and exclusive authority to determine those gatherings which are "state, multistate, or national" in nature and those which are "primarily local in nature." Because of the explicit statutory language and accompanying legislative history providing unmistakable and unambiguous exclusive authority to the local governing bodies to determine when this special alcoholic beverage permit may be issued, this office cannot provide any guidance or establish standards for local governing bodies attempting to comply with this law. Instead, it is up to the Legislature to reconsider the statute if the Legislature believes that further guidance or standards should be considered.

I hope this response and the accompanying copy of the prior Attorney General's opinion will be helpful to you and your constituents.

Sincerely,

Nicholas J. Spaeth

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Enclosure