

**N.D.A.G. Letter to Nelson (Feb. 25, 1986)**

February 25, 1986

Ms. Carol Nelson  
Barnes County State's Attorney  
P. O. Box 209  
Valley City, ND 58072

Dear Ms. Nelson:

Thank you for your letter of January 30, 1986, concerning the Sunday closing law and the grocery store exemption. According to your letter, you are inquiring as to whether the presence of employees within a grocery store performing inventory tasks causes such employees to be counted in determining whether the store may be open on a Sunday.

N.D.C.C. § 12.1-30-03(30) allows food stores to operate on a Sunday so long as the food store is operated by an owner or manager in addition to not more than six employees working in this store at one time on a Sunday. The crucial language for purposes of your letter is "employees." As we understand your question, the store described in your letter will have less than six employees working in the store at one time on a Sunday. However, a regional office will have employees working in the store at the same time performing inventory duties. Apparently, the question is whether these employees of the regional office must be counted in addition to the employees of the grocery store.

The grocery exemption from the Sunday Closing Law refers to food stores operated by an owner/manager and employees. It would appear that the Legislature has intended the word "employees" to refer to those persons employed by the food stores. Thus, we would suggest that the inquiry be made whether or not these individuals are employed by the food store which is attempting to be open on a Sunday. If these are indeed employees of the food store, they must be counted. However, if these individuals are employees of another entity rather than the food store, they need not be counted.

Obviously, the question of whether the individuals performing the inventory are employees of the food store is a question of fact which can only be answered by a review of the specific facts and circumstances involved in this particular case. For this reason, I believe an official attorney general opinion would be inappropriate.

Instead, I can only suggest that you attempt to review the relationship between the individuals performing the inventory and the food store attempting to be open on a Sunday to determine whether an employer-employee relationship exists.

Sincerely,

Nicholas J. Spaeth

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