

N.D.A.G. Letter to Payne (Feb. 27, 1989)

February 27, 1989

Honorable Douglas Payne
State Representative
House Chamber
State Capitol
Bismarck, ND 58505

Dear Representative Payne:

Thank you for your letter of December 30, 1988, discussing the ability of a city to restrict games of chance occurring within its jurisdiction. Although your letter was addressed to a member of my staff, I concluded that the matters discussed in your letter were appropriate for my review and response. Additionally, please accept my apologies for the delay in responding to you.

Your specific questions address a city's ability to restrict prize payouts for bingo winners as well as to regulate the time during which gaming occurs and the amount of inducements to participate in games of chance. I assume you are discussing only those games of chance which are subject to state regulation as opposed to those bingo and raffle games regulated entirely by cities and counties pursuant to N.D.C.C. § 53-06.1-03.

Except for local regulation of certain raffles or bingo games, the only statute discussing the regulation by cities of games of chance is N.D.C.C. § 53-06.1-05.1. That statute states as follows:

53-06.1-05.1. Regulation by city or county of number of twenty-one tables per site and number of sites per eligible organization. Cities for sites or locations within city limits, or counties, for sites or locations outside city limits, may establish by ordinance or resolution a maximum number of tables for twenty-one per site and a maximum number of sites upon which an eligible organization may conduct games of chance within the city or county.

N.D.C.C. § 53-06.1-05.1 provides limited authority to the city or county to provide a maximum number of tables for the game of twenty-one and a maximum number of gaming sites. No other authority is provided by this or any other statute allowing a city to regulate games of chance. A city, as a political subdivision, has only those powers provided to it by law. N.D. Const. art. VII, § 2. In absence of statutory authority to regulate games of chance, it is my conclusion that a city may not exercise such authority.

The existence of home rule authority does not alter my conclusion that a city is unable to regulate games of chance activities beyond the site authorization authority found within

N.D.C.C. § 53-06.1-05.1. Powers of a home rule city are found at N.D.C.C. § 40-05.1-06. Nowhere within these specified home rule powers is the subject of gaming regulation addressed. Home rule cities do have the authority to provide restrictions on the licenses they issue. N.D.C.C. § 40-05.1-06(3). However, the licenses to conduct games of chance addressed by your inquiry are licenses of the state rather than of a city.

Your letter specifically mentions restrictions on bingo prize payouts. The 1987 Legislative Session considered state restrictions on bingo prizes. Senate Bill No. 2066, as introduced to the 1987 Legislative Assembly, would have placed restrictions on bingo prizes. However, Senate Bill No. 2066 was defeated by the Legislative Assembly.

The matter of games of chance has been the subject of comprehensive state regulation. The numerous statutes found within N.D.C.C. ch. 53-06.1 provide the basis for state regulation of games of chance. These regulatory actions occurred at the direction of the people of the state by the recent amendment to N.D. Const. art. XI, § 25. It is this constitutional provision which places responsibility with the Legislative Assembly for enacting a regulatory scheme concerning to charitable games of chance.

As a result of the Legislature's failure to authorize cities to regulate games of chance, it's pervasive regulation of games of chance, as well as the Legislature's recent defeat of a measure which would have restricted bingo prize payouts, I conclude that a city may not regulate bingo prize payouts, the time during which gaming may occur, or the amount of gaming inducements.

Your letter makes a passing reference to the ability of a city to impose a greater gaming restriction than those found within the North Dakota Century Code or the North Dakota Administrative Code. This broad issue is rather difficult to discuss. The facts of each issue would have to be considered in responding to this general question.

Naturally, your question would be inapplicable where a city possesses no regulatory authority such as is currently the case with respect to bingo prize payouts, time of gaming, and gaming inducements for the reasons previously discussed.

If a city were authorized to regulate gaming, however, the provisions of N.D.C.C. § 12.1-01-05 may be applicable. This statute states that any offense defined by state law may not be superseded by any city ordinance including a city home rule ordinance. An offense is defined as conduct for which a term of imprisonment or a fine is authorized by statute. N.D.C.C. § 12.1-01-04(20).

Violations of the provisions of N.D.C.C. ch. 53-06.1 (the statute governing games of chance) are punishable as class A misdemeanors. N.D.C.C. § 53-06.1-16. A class A misdemeanor involves a potential term of imprisonment up to one year, a potential fine of up to \$1,000, or both. N.D.C.C. § 12.1-32-01(5). Clearly, violations of the provisions of N.D.C.C. ch. 53-06.1 are considered offenses.

Therefore, the provisions of N.D.C.C. § 12.1-01-05 would apply to statutes governing games of chance. Under N.D.C.C. § 12.1-01-05, no city could supersede the provisions of N.D.C.C. ch. 53-06.1 with respect to games of chance unless the Legislature specifically permitted cities to do so.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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