

N.D.A.G. Letter to Kloubec (July 8, 1991)

July 8 ,1991

Honorable Richard Kloubec
State Representative
3233 16th Avenue South
Fargo, ND 58103

Dear Representative Kloubec:

Thank you for your May 21, 1991, letter requesting my opinion on whether the State Treasurer may lawfully require a North Dakota beer wholesaler to obtain a wholesale license for each warehouse location operated by the licensee.

N.D.C.C. § 5-03-01 provides, in pertinent part:

Before any person engages in the sale at wholesale of beer or liquor in this state, that person shall first procure a license from only the state treasurer. .

. .

The three subsections of N.D.C.C. § 5-03-01 relate to applicant qualifications, the information the State Treasurer may require for determining if a license should be granted, and requiring the potential licensee to have a warehouse and office in this state in which is kept a complete set of records relative to a person's alcoholic beverage transactions. All of these three subsections refer ta the applicant and the license issued in the singular, and not the plural.

N.D.C.C. § 5-03-05 authorizes the State Treasurer to adopt administrative rules under N.D.C.C. ch. 28-32. This has been accomplished in N.D. Admin. Code art. 84-02. Consistent with N.D.C.C. § 5-03-01 concerning the issuance of a license, the administrative rules adopted also treat a wholesale license and the requirements of the license holder in the singular.

Interpreting the words and phrases of the statute according to the usual rules of grammar and using the words in their ordinary sense, it is my opinion that N.D.C.C. § 5-03-01 requires a licensed North Dakota beer wholesaler to have only one license regardless of the number of locations at which the wholesaler conducts the wholesale business. (N.D.C.C. §§ 1-02-02, 1-02-03). It is my further opinion that although a wholesale beer licensee may be required to obtain only one license for the conduct of the wholesale business, the State Treasurer, under the rules adopted-and the forms used thereunder, may require the licensed wholesaler to list all locations from which the wholesale beer business will be conducted and to limit the conduct of the business to only the locations listed on the license until the license is amended to change or add locations. This would require a listing of the locations on the individual license issued to the wholesaler.

Furthermore, the State Treasurer may establish by administrative rule a reasonable limitation on the number of locations from which a licensed wholesaler may conduct the wholesale business, as well as geographic limitations on the distance between those locations. The State Treasurer may also adopt other rules and regulations related to his responsibility to regulate effectively this industry.

Sincerely,

Nicholas J. Spaeth

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