

## **N.D.A.G. Letter to Ficek (July 30, 1986)**

July 30, 1986

Mr. Vince H. Ficek  
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P.O. Box 866  
Dickinson, ND 58601-10866

Dear Mr. Ficek:

Thank you for your letter of June 6, 1986, asking for my opinion concerning four questions pertaining to a city's authority to revoke a gaming organization's site authorization. I wish to apologize that this response is not more timely, but this is a matter of considerable importance and I wish to consider all of the relevant factors before making my decision.

The essentials of due process require notice and the opportunity to be heard and defend in an orderly proceeding adapted to the nature of the case. Schmidt v. Thompson, 347 N.W.2d 315 (N.D. 1984). However, your first question is whether the granting of a future site authorization creates a need for due process before it is removed.

The North Dakota Supreme Court has stated that an expired license (liquor) has fulfilled the purpose of its creation and is therefore of no further value or effect. An expired license confers no right upon the licensee. Smith v. City of LaMoure, 44 N.W.2d 789, 795 (N.D. 1950). However that case further went on to say that there was an exception and a property right in a new license that had just been issued.

Here, we are dealing with a permit that has been issued but which does not take effect until approximately one month in the future. This granting of a permit creates a property right in the grantee sufficient to require a due process hearing before its revocation. Therefore, Prairie Public TV is entitled to appropriate notice and opportunity for hearing in accordance with normal due process requirements and with Section 13.1-8 of the Dickinson City Code. Adequate notice requires, at a minimum, notifying the organization of the hearing, the particular grounds for the hearing, and the potential consequences.

N.D. Admin. Code §10-04-04-06 gives a local governing body the discretion to deny, reject, or revoke a site authorization. However, in liquor license cases, the North Dakota Supreme Court has said that the power to regulate and to approve applications by a city is not unfettered but must be reasonable as to its manner and circumstances. Thielen v. Kostelecky, 287 N.W. 513, 517 (N.D. 1939). The North Dakota Supreme Court has further stated that while cities have been given the power to exercise judgment and discretion in the granting or denying of licenses, the city must enact ordinances reserving that discretion and must prescribe reasonable rules and standards to govern the exercise of that discretion. Mini Mart v. City of Minot, 347 N.W.2d 131, 139 (N.D. 1984).

Therefore, the City of Dickinson would have the discretion to deny, reject, etc., a site authorization, but that discretion must be reserved by ordinance and must give reasonable criteria and grounds for that exercise in judgment and discretion. It would appear that since the city of Dickinson has passed City Code §13.1-8 that it has both reserved the right to make that discretion and has set forth the mechanism for exercise of that discretion. It would be inappropriate for the city not to follow its established procedure.

Therefore, I fully concur in the opinions you have rendered to the city commissioners of Dickinson. If you have any further questions, do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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