

## **N.D.A.G. Letter to Tebelius (Sep. 10, 1986)**

September 10, 1986

Mr. Mark A. Tebelius  
1012 Lincoln Avenue  
Harvey, ND 58341-1595

Dear Mr. Tebelius:

Thank you very much for your letter of July 25, 1986, concerning the city's authority to prohibit eligible organizations from conducting games of chance within the city limits. I apologize for the delay in answering your letter.

Nowhere in the Century Code is a city granted the authority to prohibit an eligible organization from gaming once the city has determined it will allow gaming. However, the city has been granted the authority to restrict or limit gaming. The extent of that authority can be found in two sections of the Century Code and one administrative rule.

N.D.C.C. §53-06.1-06 grants cities the authority to limit the number of twenty-one tables per site and the maximum number of sites which an eligible organization may have. N.D.C.C. §53-06.1-03(3)(b) states that a licensed applicant must first secure site approval from the governing body of the city before obtaining a gaming license. It further states that this permit is granted at the discretion of the governing body. North Dakota Administrative Rule §10-04-04-06 implements the previous two statutes.

Taken together, these statutes and rule grant a city the authority it needs to deny or reject a site authorization or limit the organization to a certain number of sites. However, that discretion is not unlimited. The North Dakota Supreme Court, in liquor license cases, has said that the power to regulate and approve applications by a city is not unfettered but must be reasonable as to its manner and circumstances. Thieland v. Kostelecky, 287 N.W. 513, 517 (N.D. 1939). The North Dakota Court has further said that while cities have been given the power to exercise judgment and discretion in granting and denying 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 Harvey would have to promulgate such ordinances and rules as are necessary to reserve the discretion needed to approve or deny site authorizations. Furthermore, they must determine what criteria will be used in denying or rejecting site authorizations or in determining the maximum number of sites an eligible organization may have.

I trust this response is of assistance to you. If you have any further questions do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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