

N.D.A.G. Letter to Wold (Dec. 18, 1989)

December 18, 1989

Mr. James W. Wold
Attorney at Law
P.O. Box 628
Cooperstown, ND 58425

Re: Sunday Liquor Sales

Dear Jim:

Thank you for your December 5, 1989, letter concerning the special Sunday event alcoholic beverage permit provisions of N.D.C.C. § 5-02-05.1. This office has received numerous inquiries from liquor licensees and city and county officials concerning the special event provisions of that section.

The 1989 legislature significantly amended N.D.C.C. § 5-02-05.1 to permit the dispensing of all alcoholic beverages by a private club, lodge, restaurant, motel, or hotel which is licensed as a retail alcoholic beverage establishment. Unless a bar is defined under city ordinance or by county resolution as a private club, lodge, restaurant, motel, or hotel, that establishment cannot obtain the special event permit authorized by N.D.C.C. § 5-02-05.1. Therefore, the city, in its ordinance, and the county, in its resolution, should define those retail alcoholic beverage establishments which satisfy one of these five classifications.

N.D.C.C. § 5-02-05.1 grants the sole authority for issuing the special permits to the governing body of the city or county. No state permit is either authorized or required under this section. Furthermore, this statute allows the governing body to establish conditions to the special event permit.

In addition, N.D.C.C. § 5-02-05.1(4) places similar authority upon the governing body in determining whether the event is "primarily local in nature." That subsection provides:

4. The special Sunday event alcoholic beverage permit may not be granted to allow the distribution of alcoholic beverages at gatherings or meetings which, in the opinion of the governing body of the city or county, are primarily local in nature.

In N.D. Op. Att'y Gen. 89-13, issued to State Senator John M. Olson on August 21, 1989, I concluded that city and county governing bodies have the sole authority to determine what constitutes a state, multistate, or national event under N.D.C.C. § 5-02-05.1. I have enclosed a copy of that opinion with this letter.

The local governing body must determine whether New Years Eve or any other "event" is primarily local in nature. If the governing body determines that the event is "primarily local in nature," N.D.C.C. § 5-02-05.1 prohibits the issuance of the special Sunday event alcoholic beverage permit. Since this is a factual question left solely to the decision of the local governing body, I cannot issue a legal opinion as to whether or not a specific event is "primarily local in nature."

For your information, there appears to be a split among the governing boards of cities in the state concerning the New Years Eve issue. Some cities have determined that New Years Eve is either not an "event" or that it is "primarily local in nature." On the other hand, the boards of other cities, such as Bismarck, have authorized special event permits for that day. In addition, inquiries are being made as to whether cities will permit the retail sale of alcoholic beverages on Superbowl Sunday.

I have been advised that Robert Bennett of my staff has responded to the vast majority of inquiries concerning the special event permit issue. His statements to the callers are consistent with my response to your letter. Mr. Bennett informed me that all callers have been told that if the establishment is a private club, lodge, restaurant, motel, or hotel as defined under city ordinances or county resolutions, that establishment could make a request to the appropriate governing body for a special event permit. He also states that callers are told that whether New Years Eve is or is not "primarily local in nature" is left to the determination of the local governing board.

You have also questioned whether N.D. C.C. § 5-02-01.1 authorizes the issuance of a special event permit. N.D.C.C. § 5-02-01.1 provides:

Special permit authorized - Penalty. The local governing body may by special permit authorize an on sale, off sale, or on or off sale alcoholic beverage licensee to engage in the sale of alcoholic beverages at special events designated by the permit. A fee for the local special permit may be set by ordinance or resolution at not more than twenty-five dollars. The permit may not be valid for a period greater than three consecutive days. The local governing body may establish rules as it may deem proper to regulate and restrict the operation of a special permit. Any person who dispenses, sells, or permits the consumption of alcoholic beverages in violation of this section or the conditions of a special permit is guilty of a class B misdemeanor.

N.D.C.C. § 5-02-01.1 is inapplicable to the general issue as to whether a retail alcoholic beverage establishment may dispense alcoholic beverages for sale on a Sunday. N.D.C.C. § 5-02-05 specifically prohibits the dispensing of alcoholic beverages on a Sunday. The only exceptions to this prohibition are N.D.C.C. § 5-02-05.1 and 5-02-05.2. N.D.C.C. § 5-02-01.1 is not listed as an exception to this general prohibition.

In addition, N.D.C.C. § 5-02-01.1 may be applicable to all on-sale, off-sale, or on- or off-sale alcoholic beverage licensees. N.D.C.C. § 5-02-05.1 does not apply to all alcoholic

beverage licensees but only to private clubs, lodges, restaurants, motels, or hotels. The special permit under N.D.C.C. § 5-02-01.1 may be issued for up to three consecutive days. However, N.D.C.C. § 5-02-05.1(2) limits the special Sunday event alcoholic beverage permit to one Sunday only.

N.D.C.C. § 5-02-05.1 is a specific statute relating to the dispensing of alcoholic beverages on Sunday as an exception to the general prohibition for such activities set forth in N.D.C.C. § 5-02-05. If there is a conflict between N.D.C.C. § 5-02-05.1 and 5-02-01.1, and the fact relevant amendments to N.D.C.C. § 5-02-05.1 were enacted after the adoption of N.D.C.C. § 5-02-01.1, N.D.C.C. § 1-02-07 requires the special provisions of N.D.C.C. 5-02-05.1 to prevail.

I hope that I have adequately responded to your inquiry.

Sincerely,

Nicholas J. Spaeth

jfl

Enclosure