

## N.D.A.G. Letter to Solberg (Dec. 21, 1989)

December 21, 1989

Mr. Wayne O. Solberg  
Fargo City Attorney  
P.O. Box 1897  
Fargo, ND 58107-1897

Dear Mr. Solberg:

Thank you for your October 27, 1989, letter in which you have made inquiries concerning N.D.C.C. § 5-02-06 which provides for the limited presence of persons under the age of twenty-one years on the premises of alcoholic beverage licensed establishments. You have inquired whether the 1989 amendments to N.D.C.C. § 5-02-06 prohibit persons under the age of twenty-one years of age from patronizing or entering a restaurant where the sale of food exceeds the sale of alcoholic beverages.

North Dakota state law generally prohibits persons under the age of twenty-one years from entering upon, or remaining within, a licensed alcoholic beverage establishment. However, certain exceptions to this general rule were adopted by the North Dakota legislature in N.D.C.C. § 5-01-08 and 5-02-06.

N.D.C.C. § 5-01-08 provides:

5-01-08. Persons under twenty-one years of age prohibited from entering licensed premises - Penalty - Exceptions - Referrals to addiction facilities. Except as permitted in this section and section 5-02-06, any person under twenty-one years of age purchasing, attempting to purchase, or being in possession of alcoholic beverages, or furnishing money to any person for such purchase, or entering any licensed premises where alcoholic beverages are being sold or displayed, except a restaurant when accompanied by a parent or legal guardian, or in accordance with section 5-02-06, or if the person is a law enforcement officer entering the premises in the performance of official duty, is guilty of a class B misdemeanor. The court may, under this section, refer the person to an outpatient addiction facility licensed by the state department of health and consolidated laboratories for evaluation and appropriate counseling or treatment.

(Emphasis supplied.)

N.D.C.C. § 5-02-06 provides:

5-02-06. Prohibitions as to person under twenty-one years of age - Penalty - Exceptions. Except as permitted in this section, any licensee who

dispenses alcoholic beverages to a person under twenty-one years of age, or who permits such a person to remain on the licensed premises while alcoholic beverages are being sold or displayed, is guilty of a class A misdemeanor, subject to sections 5-01-08, 5-01-08.1, and 5-01-08.2. Any person under twenty-one years of age may remain in a restaurant where alcoholic beverages are being sold if the restaurant is separated from the room in which alcoholic beverages are opened or mixed and gross sales of food are at least equal to gross sales of alcoholic beverages which are consumed in the dining area, if a person is employed by the restaurant as a food waiter, food waitress, busboy, or busgirl under the direct supervision of a person twenty-one or more years of age and is not engaged in the sale, dispensing, delivery, or consumption of alcoholic beverages, or if the person is a law enforcement officer entering the premises in the performance of official duty. Any person who is nineteen years of age or older but under twenty-one years of age may be employed by the restaurant to serve and collect money for alcoholic beverages, if the person is under the direct supervision of a person twenty-one or more years of age, but may not be engaged in mixing, dispensing, or consuming alcoholic beverages. Any establishment where alcoholic beverages are sold may employ persons from eighteen to twenty-one years of age to work in the capacity of musicians under the direct supervision of a person twenty-one or more years of age.

(Emphasis supplied.)

N.D.C.C. § 5-01-08 permits a person under the age of twenty-one years to enter a licensed premises if that person is accompanied by a parent or guardian in a restaurant, if the person is a law enforcement officer entering the premises in the performances of official duty, or if the person comes within the exceptions set forth in N.D.C.C. § 5-02-06. N.D.C.C. § 5-02-06 sets forth several exceptions upon which a licensee may permit a minor to remain on the licensed premises. In addition, the prohibition against permitting a person to remain on the licensed premises generally set forth in N.D.C.C. § 5-02-06, is subject to N.D.C.C. § 5-01-08.

Since both N.D.C.C. § 5-01-08 and 5-02-06 address when a minor may be permitted to enter or remain upon a licensed premises, each of these sections must be read together to give effect to both provisions.

Reading these provisions together and giving effect to each of these provisions leads to the conclusion that the 1989 amendments to N.D.C.C. § 5-02-06 do not prohibit persons under the age of twenty-one years of age from patronizing or entering a restaurant where the sale of food exceeds the sale of alcoholic beverages and the restaurant is separated from the room in which the alcoholic beverages are opened or mixed.

Under the provisions of N.D.C.C. § 5-01-08, a person under the age of twenty-one years may enter a restaurant which is a licensed premises when accompanied by a parent or

guardian. This person may enter regardless of whether or not the restaurant is separated from the room in which alcoholic beverages are opened or mixed, and whether or not gross sales of food are at least equal to the gross sales of alcoholic beverages which are consumed in the dining area.

N.D.C.C. § 5-02-06 authorizes the licensee to permit a person under the age of twenty-one years and unaccompanied by a parent or guardian, to remain in a restaurant where alcoholic beverages are being sold if the restaurant is separated from the room in which the alcoholic beverages are opened or mixed and if gross sales of food are at least equal to gross sales of alcoholic beverages consumed in the dining area.

In applying these statutory provisions, a person under the age of twenty-one years who wishes to enter a restaurant which is a licensed premises may do so if either: the restaurant is separated from the room in which alcoholic beverages are opened or mixed, and gross sales of foods are at least equal to the gross sales of alcoholic beverages which are consumed in the dining area; or pursuant to N.D.C.C. § 5-01-08 if that person is accompanied by his or her parent or guardian.

Unless the person under the age of twenty-one years is accompanied by his or her parent or guardian in a restaurant or is present at a restaurant which meets the restrictions of N.D.C.C. § 5-02-06, no person under the age of twenty-one years may enter upon, or remain in, any licensed premises unless that person comes within the other exceptions of N.D.C.C. § 5-01-08 and 5-02-06. As you have correctly observed, these exceptions include a law enforcement officer while on official duty, a food waiter, waitress, busboy, or busgirl employed by the restaurant under the direct supervision of a person over the age of twenty-one years of age and who is not engaged in the sale, dispensing, delivery or consumption of alcoholic beverages, a person who is over the age of eighteen years and is employed as a musician under the direct supervision of a person over the age of twenty-one years, or a person who is at least nineteen years of age and who is employed by the restaurant to serve and collect money for alcoholic beverages while under the supervision of a person over the age of twenty-one years but who is not engaged in the mixing, dispensing, or consuming of alcoholic beverages.

I do not believe that the 1989 legislative amendments to N.D.C.C. § 5-02-06 change the ability of persons under the age of twenty-one years to enter a restaurant where alcoholic beverages are being sold or dispensed if that person and the licensee come within the exceptions created by N.D.C.C. § 5-01-08 and 5-02-06. Although it may have been preferable to have one statutory provision listing all exceptions to the general prohibition against persons under the age of twenty-one years entering or remaining upon a licensed premises, the language of these respective sections is sufficiently clear to support this conclusion.

I hope that I have adequately responded to your inquiry. Should you have further questions concerning this matter, please feel free to contact me at your convenience.

Sincerely,

Nicholas J. Spaeth

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