

OPINION
65-7

July 13, 1965 (OPINION)

Mr. Walter Christensen

State Treasurer

RE: Alcoholic beverages - Import - Taxation

This is in response to your letter in which you request an opinion on the amendment to Section 5-03-06 enacted by the 1965 Legislature through H.B. No. 769. You specifically ask, " * * * is it now within the law for an individual traveling abroad to purchase and subsequently have brought into North Dakota one wine gallon tax-free liquor with luggage which is on the individual's travel tickets?

Section 5-03-06, as amended, provides as follows:

"The taxes levied by this chapter shall not apply to one wine gallon or less of alcoholic beverages brought into North Dakota from foreign countries by any one person for his personal use and not for resale and which was in his personal possession at the time of his entry." (Emphasis supplied.)

The underscored language is new material and comprises the amendment. The term "possession" by itself has various and ambiguous meanings. In a sense it defies defining even by courts and jurists. Its shade of meaning can only be determined from the context in which it is used. Judicially it has been frequently defined to mean "owning, having one's control to the exclusion of others, enjoining the domain of property, both real and personal." In this instance the term "possession" is modified by the term "personal." This indicates that the Legislature intended a narrower or limited construction of the term "possession." The term "possession" is limited to "personal possession."

Section 5-03-06, as amended, by its very nature is concerned with transactions involving or surrounding travel. We must assume that the Legislature was aware of the modes of travel and the manner in which luggage is carried or handled during such travel. We also assume that the Legislature was aware of the limited privilege of checking baggage with a passenger ticket. While the language, " * * * in his personal possession," is to convey a narrow meaning, we do not believe that the Legislature intended such term to mean only that the item must be in the individual's physical immediate possession.

We are also advised that the Legislature in amending Section 5-03-06 did so to eliminate the abuses which resulted from its provisions prior to the amendment. We are inclined to adopt the view that the legislation was designed more to eliminate the abuses than to specify the exact detailed manner in which alcohol may be brought into this state tax-free.

It is our opinion that the new language will permit a person to bring

with him one wine gallon if same is either hand carried or is in his luggage which may be hand carried or checked with his passenger ticket, but it would not include instances where baggage is shipped independent of the passenger's ticket. The baggage checked in which the alcoholic beverage is carried must be on the individual's ticket and not on some other person's ticket.

You also inquire if it is possible for an individual to have one wine gallon brought into North Dakota upon payment of North Dakota liquor tax. If you are inquiring whether or not an individual may pay the tax, the answer is that it is possible but highly improbable because of the cost and procedure required to be followed. The tax in question is imposed upon the wholesaler and is collected from him. (See Section 5-03-05 of the North Dakota Century Code and related sections.)

Before a person may act as a wholesaler, before engaging in such business he must procure a wholesale license under Section 5-03-04 of the North Dakota Century Code. Such license must be obtained from the local city or village and the fee therefor shall not be less than \$500.00 nor more than \$1,000.00. Because of the cost and procedure it virtually becomes prohibitive for an individual to bring in the wine gallon and attempt to pay the liquor tax thereon.

HELGI JOHANNESON

Attorney General