

OPINION
70-2

August 18, 1970 (OPINION)

Mr. Gerald Rustad
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Williams County

RE: Alcoholic Beverages - County License Fees - Amount

This is in reply to your letter of August 7, 1970, wherein you request an opinion on Section 5-02-03 of the North Dakota Century Code which section concerns itself with the establishment of local license fees for alcoholic beverage licenses. You ask the following question:

May the board of County Commissioners by resolution set the annual local license fees at varying amounts for the various establishments throughout the county?"

Section 5-02-03 of the North Dakota Century Code reads as follows:

LOCAL LICENSE FEES. The fee for an annual local on and off sale liquor license shall be set by ordinance or resolution at not less than two hundred dollars nor more than two thousand dollars, except outside the corporate limits of a city the fee shall not exceed one thousand dollars. The fee for an annual on and off sale local beer license shall be set by ordinance or resolution at not less than fifty dollars nor more than five hundred dollars. The fee for an annual local exclusive off sale beer or off sale liquor license shall not be more than the fee charged for an on and off sale license. The local governing body may by ordinance or resolution provide for issuance of licenses for any period not to exceed one year and may allow for proration and refunds of license fees."

The initial problem involved with the establishment of various fees for the licensing of alcoholic beverage establishments at different locations within a county is the possible violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and of Section 11 of the North Dakota Constitution, which provides that all laws of a general nature shall have a uniform operation, and of Section 20 of the North Dakota Constitution, which provides in part that no citizen or class of citizens shall be granted privileges or immunities which upon the same terms shall not be granted to all citizens.

Courts have generally held that laws must operate uniformly on persons who are in like situations. In this regard, we quote from the North Dakota Supreme Court in Figenskau v. McCoy, 265 N.W. 259 (1936) at page 262 therein:

This court, in discussing the provisions of the North Dakota Constitution in the case of State ex rel. Dorval v. Hamilton, 20 N.D. 592, N.W. 916, 918, said: "It is doubtless true that, notwithstanding constitutional inhibitions such as those contained in sections 11 and 20, the Legislature may provide a certain classification of citizens to be differently affected by the same general rule. The limitation imposed upon legislation of this character, is, however, that any classification provided as the basis for distinctive or special operation of the law must be natural, not artificial." "It must stand on some reason having regard to the character of the legislation" * * * ."

Therefore, it would appear that if the county commissioners were to establish varying fees for the same type of license, here a local alcoholic beverage license, that the various fees charged would have to be reflective of various classifications of license holders within the broad general classification already established by the Legislature in the enactment of Section 5-02-03 of the North Dakota Century Code, and that such classifications would have to be "natural, not artificial." We are not familiar with the bases which would be used by the board of county commissioners in determining the various classifications of local alcoholic

beverage licenses; so we are unable to comment with regard to whether such classifications would be "reasonable" or not. However, such information is not necessary for the reason that it is our opinion that a board of county commissioners is without the authority to set local alcoholic beverage license fees at varying amounts within the county.

The Legislature has, by virtue of Section 5-02-03 of the North Dakota Century Code, provided a board of county commissioners with the authority to establish "the fee" for local alcoholic beverage licenses, and such fee is to be within the limits expressed in this section. The Legislature has already established classifications of alcoholic beverage licenses insofar as they concern varying fees.

For example, the fee for such a license may be higher in a city than in those areas outside a city. A board of county commissioners has only such powers as is conferred upon that body by the Legislature. Insofar as the statute under discussion is concerned, we note that the Legislature has itself classified alcoholic beverage licenses into two categories. There is no authorization, either expressed or implied in the statute, for a board of county commissioners to create further classifications within these already existing classifications; and in the absence of such authority, it must, therefore, be our opinion that regardless of the reasonableness of any classifications established by a board of county commissioners relating to local alcoholic beverage licenses and the fees to be charged therefore, a board of county commissioners is without the authority to extend such classifications any further than those presently established by the Legislature.

HELGI JOHANNESON
Attorney General