

**OPINION
70-24**

April 6, 1970(OPINION)

Mr. Garylle B. Stewart
Assistant City Attorney
Fargo, North Dakota

RE: Alcoholic Beverages - Licenses - Hospitals and Nursing Homes

This is in response to your letter in which you ask if this office has issued a ruling whether or not hospitals or nursing homes may furnish beer or liquor to their patients and that we provide you with a copy of such ruling. If no such ruling has previously been issued, then you ask for an opinion whether or not such hospitals or nursing homes may furnish beer or liquor to the patients. You also inquire as to the legality of the wholesale beer distributor selling beer to hospitals and nursing homes. Section 5-02-01 states as follows:

"5-02-01. STATE AND LOCAL RETAIL LICENSE REQUIRED - EXCEPTION. Any person engaging in the sale of alcoholic beverages at retail without first securing an appropriate license from the attorney general and the governing body of any city, or board of county commissioners if said business is located outside the corporate limits of a city, is guilty of a misdemeanor. This section shall not apply to public carriers engaged in interstate commerce."

It is noted that this section prohibits the sale of alcoholic beverages at retail without first obtaining a license. We also note that public carriers engaged in interstate commerce are exempt from its provision. We would assume that the furnishing of beer or liquor to patients involves a charge in one form or another. The cost of the beer or liquor, we assume, must be paid for by either the patient or some other person on behalf of the patient. On such basis, it is apparent that a sale is involved and would constitute a violation unless the hospital or nursing home had a license. However, we recognize that under certain conditions the doctor might prescribe beer or liquor as a medication. If a licensed doctor were to prescribe dosages of beer or liquor to be taken internally, it would bring the transaction within the realm of the authority given to a physician and would not be governed by the Alcoholic Beverage Act.

It is our opinion that hospitals and nursing homes may not furnish beer or liquor to patients except upon a doctor's prescription. This, however, does not prevent a patient from bringing, or causing to be brought, his own beer to be consumed as permitted, if the hospital or nursing home permits this type of activity in its establishments. This latter item is one which would be governed by the rules and regulations of the hospital or nursing home.

As to the question of whether or not a wholesaler may sell beer to hospitals or nursing homes, the State law does not contain a specific prohibition against this; but, by the very nature of the transaction, a wholesaler basically only transacts business with a retailer. In addition to this, if the hospital or nursing home were to purchase the beer for the patients, the hospital or nursing home would, in effect, be engaged in the sale of alcoholic beverages without having a retailer's license. Thus, while the statutes do not specifically prevent a wholesaler from selling to a hospital or nursing home, the hospital or nursing home would not be in a position to sell same without a license. If the beer or liquor were to be used as medication to be dispensed only upon a doctor's prescription, to satisfy other requirements of law the hospital or nursing home would have to maintain a pharmacy. The current law does not contemplate hospitals or nursing homes to be engaged in this type of activity.

We assume you are aware of Section 48-05-06 which pertains to charitable and penal institutions and prohibits alcoholic beverages in such institutions - but hospitals and nursing homes are not necessarily charitable or penal institutions as such.

HELGI JOHANNESON
Attorney General