

**OPINION
72-379**

April 26, 1972 (OPINION)

Mr. John O. Garaas
State's Attorney
Fargo, ND

RE: Sunday - Closing Statutes - Interpretation

This is in response to your letter of April 17, 1972, wherein you make inquiry of this office regarding the Sunday closing statute. You submit the following in your letter:

We request your opinion of the correct interpretation of subsection 28 of North Dakota Century Code section 12-21.1-04. This statute provides as follows:

1. Notwithstanding any other provisions of this chapter, the operation of any of the following businesses shall be allowed on Sundays:

8. Grocery store operated by the owner-manager who regularly employs not more than three employees for the operation of said store.

We have two questions regarding this statute. First, does the term 'owner-manager' include a situation wherein an owner of a store is not the same person as the manager. We take the statute to mean that if the owner of the store and the manager of the store are two separate persons or entities, that the store is not eligible for the exemption. Is that interpretation correct?

Second, does the term 'three employees' include the 'owner-manager'? We interpret the statute to read that there may be four employees working at the store, which four persons includes an owner-manager. Is that interpretation?"

With regard to your first question, whether the term "owner-manager" includes the situation wherein an owner of a store is not the same person as the manager, we would note that the statute specifies the exemption, utilizing the hyphenated word "owner-manager." As such, it would clearly appear that the same is applicable to a singular person acting in a dual role. For this reason we are in agreement with your stated opinion; i.e., if the owner of the store and the manager of the store are two separate persons or entities, such business would not then be eligible for the exemption.

With regard to your second question, whether the term "three employees" includes the "owner-manager," we are of the opinion that your interpretation is correct and the the same permits three employees in addition to the owner-manager. Insofar as the interpretation of your first question would preclude exemption in a situation where there is a remote investment owner who hires a manager, the question of whether a "manager" is an employee to be

counted as one of the specified "three employees" becomes moot. The requirement being specific that the exemption applies to an "owner-manager," it would appear that such "owner-manager" would be able to have three employees and still claim the exemption from the statute.

We trust that the foregoing general observations and comments will adequately reflect the opinion of this office with regard to the matters submitted herein.

HELGI JOHANNESON

Attorney General