

**OPINION
76-114**

May 11, 1976 (OPINION)

The Honorable Walter Christensen

State Treasurer

State Capitol

Bismarck, ND 58505

Dear Mr. Christensen:

In your letter of April 13, 1976, you set forth the following:

I respectfully request your opinion as to whether or not it is legal for an individual or corporation who holds the necessary legal North Dakota retail alcohol beverage licenses to lease his retail alcohol beverage business including his license to an individual who does not have the proper legal alcohol beverage licenses.

While we see no problem with the leasing of the physical establishment, we would call your attention to the provisions of the North Dakota Century Code, Section 5-02-01 which provides:

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 class A misdemeanor. This section shall not apply to public carriers engaged in interstate commerce. (Emphasis supplied).

The foregoing section makes it clear that it is the person engaging in the sale of alcoholic beverages who must have the appropriate licenses. If the establishment is leased, it is the lessee who is engaging in the sale of the alcoholic beverages and not the lessor. Therefore, the person leasing the premises would not be entitled to sell alcoholic beverages under the license of the person from whom the premises are being rented. The North Dakota law also sets down detailed qualifications for a person to hold an alcoholic beverage license. These qualifications would really make no sense if it were possible to rent a license from somebody else. North Dakota Century Code Section 5-02-02 provides:

QUALIFICATIONS FOR LICENSE. - No retail license shall be issued to any person unless the applicant shall file a sworn application, accompanied by the required fee, showing the following qualifications:

1. Applicant, other than corporate, must be a citizen of the United States and a resident of the state of North Dakota and a person of good moral character.

2. If applicant is a corporation the manager of the licensed premises and the officers, directors and stockholders must be citizens of the United States and persons of good moral character. Corporate applicants must first be properly registered with the secretary of state.
3. Applicant or manager must not have been convicted of a felony.
4. Building in which business is to be conducted must meet local and state requirements regarding the sanitation and safety.
5. Applicant for a state license must have first secured a local license.
6. The attorney general, or local governing body, may require applicant to set forth such other information in application as necessary to enable them to determine if a license should be granted.

North Dakota Century Code Section 5-02-03, provides additional indication of legislative intent that licenses not be subject to leasing, by providing in part: "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."

Additional support for this position is provided by North Dakota Century Code Section 5-03-01 which provides in part:

STATE WHOLESALE LICENSE REQUIRED - QUALIFICATIONS - PENALTY. -
Before any person shall engage in the sale at wholesale of beer or liquor in this state he shall first procure a license from only the state treasurer. Such license shall only allow sale to licensed retailers, licensed wholesalers and regular retail outlets on federal military reservations.

Therefore, we are of the opinion that alcoholic beverage licenses are issued only to specific individual natural or corporate persons, and that such licenses entitle only the specific natural or corporate persons to engage in the sale of alcoholic beverages, and that such license is not leaseable.

I trust that this adequately sets forth the position of this office and this issuance is of some assistance to you.

Sincerely,

ALLEN I. OLSON

Attorney General