

OPINION
76-167

November 19, 1976 (OPINION)

Honorable Rolland Redlin
State Senator
District 5
1005 21st N.W.
Minot, North Dakota 58701

Dear Senator Redlin:

We are in receipt of your letter dated October 8, 1976. In that letter you set out the following facts and questions:

In Trinity Hospital at Minot, North Dakota, there is a small gift shop located on the second floor of the hospital which sells primarily to persons who are visiting patients. Among the gifts handled are reading materials, flowers, candy, and other sundries. Since Sunday afternoon is a most important day for hospital patient visitors they would like to be able to operate this gift shop as a part of the total hospital service on Sundays as well as weekdays. In your opinion, would the operation of this gift shop on Sunday be contrary to the Sunday Closing Law? I am hoping that a gift such as this, manned by only one paid employee and volunteer help, could be considered a necessary part of hospital services and entitled to operate on Sunday. This particular gift shop is operated by the volunteer Ladies Axillary (sic) organization of Trinity Hospital. Any profits made by the shop are used to purchase additional equipment for the better operation of the hospital.

The law governing Sunday sales is found in Chapter 12.1-30 of the North Dakota Century Code. The particular prohibition against such sales is found in Section 12.1-30-01 quoted herewith as follows:

12.1-30-01. BUSINESS OR LABOR ON SUNDAY - EXEMPTIONS - CLASSIFICATION OF OFFENSES.

1. Except as otherwise provided in sections 12.1-30-02 and 12.1-30-03, it shall be a class B misdemeanor for any person on Sunday to engage in or conduct business or labor for profit in the usual manner and location, or to operate a place of business open to the public, or to authorize or direct his employees or agents to take such action. This subsection shall not apply to any person who in good faith observes a day other than Sunday as the Sabbath, if he refrains from engaging in or conducting business or labor for profit and closes his place of business to the public on that day.
2. The attorney general, a state's attorney, a mayor, a city manager, or a city attorney may petition a district court, for the district where a violation is occurring, to enjoin a violation of this section.

In addition, Section 12.1-30-02 sets out which personal property sales are allowable on Sunday, as an exception to the prohibition quoted above. This statute is quoted herewith as follows:

12.1-30-02. PERSONAL PROPERTY SALES ALLOWABLE ON SUNDAY. - The sale of any of the following items of personal property shall be allowed during any and all hours on Sundays:

1. Drugs, medical and surgical supplies, or any object purchased on the written prescription of a licensed medical or dental practitioner for the treatment of a patient.
2. Food prepared for consumption on or off the premises where sold.
3. Newspapers, magazines, and books.
4. Gasoline, fuel additives, lubricants, and antifreeze.
5. Tires.
6. Repair or replacement parts and equipment necessary to, and safety devices intended for, safe and efficient operation of land vehicles, boats, and aircraft.
7. Emergency plumbing, heating, cooling, and electrical repair and replacement parts and equipment.
8. Cooking, heating, and lighting fuel.
9. Infant supplies.
10. Camera and school supplies, stationery, and cosmetics.
11. Beer and alcoholic beverages but only until one o'clock a.m.

Finally, Section 12.1-30-03 sets out certain business exceptions to the Sunday closing law. Some of the businesses excepted from the provisions of that law and thereby allowed to operate on Sunday, are set out in that section which is quoted, in part, as follows:

12.1-30-03. BUSINESSES ALLOWED TO OPERATE ON SUNDAY. - The operation of any of the following businesses shall be allowed on Sundays:

- . . . 3. Hospitals and nursing homes.
- . . . 27. Service organizations (USO, YMCA, etc.).

In your letter you refer to some of the items that are sold by the hospital auxiliary. If their sales include any of the items set out in Section 12.1-30-02, then such sales by the hospital auxiliary are allowable on Sunday. Some of the personal property items mentioned in Section 12.1-30-02, appear to be those which are typically sold in hospital gift shops.

In addition, Section 12.1-30-03 permits certain businesses to operate on Sundays, largely because of the critical services which they render to the community. One of these excepted businesses is hospitals. While you do not state whether the gift shop in question is a business "operation" of the hospital, you do indicate that the gift shop is operated by the "volunteer Ladies Auxiliary organization" of the hospital with the profits used to purchase hospital equipment. If such a gift shop is an "operation" of the hospital, then it is our opinion that such a gift shop, as a part of the hospital facility, comes under the exceptions set out in Section 12.1-30-03 as businesses allowed to operate on Sunday. If the hospital auxiliary operating the gift shop in question is merely using the hospital premises as a separate and distinct business, the profits of which go to the hospital, the hospital auxiliary operation in question may also justify its business as an exempt Sunday business by being considered a "service organization" under Section 12.1-30-03(27). Such a construction, however, appears more tenuous than the exception provided in Subsection 3 of Section 12.1-30-03.

In summary, therefore, it is our opinion that if the gift shop in question sells any of the items set out in Section 12.1-30-02, N.D.C.C., its operation is not prohibited as a Sunday business for those items specified in that section. In addition, it is our opinion that if the operation of the gift shop is merely a part of the total hospital enterprise; which would necessarily include the well-being of patients primarily served by the gift shop, and is conducted within the hospital facilities, the gift shop operation becomes an integral part of the hospital business and consequently is excepted from the Sunday business prohibition under Subsection 3 of Section 12.1-30-03.

Sincerely,

ALLEN I. OLSON

Attorney General