

Date Issued: February 14, 1986 (AGO 86-9)

Requested by: Earle R. Myers, Jr., Richland County  
State's Attorney

- QUESTIONS PRESENTED -

I.

Whether N.D.C.C. section 5-01-07 is mandatory in its application toward all beer and liquor licenses issued by a board of county commissioners for businesses located outside the corporate limits of a city but within an organized township.

II.

Whether N.D.C.C. section 5-01-07 requires written approval of a beer or liquor license by a board of township supervisors prior to renewal of the license by the board of county commissioners every third year following its original issuance.

III.

On what basis may a township board of supervisors grant or withhold its approval of a beer or liquor license pursuant to N.D.C.C. section 5-01-07?

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that N.D.C.C. section 5-01-07 is mandatory in its application toward all beer and liquor licenses issued by a board of county commissioners for businesses located outside the corporate limits of a city but within an organized township.

II.

It is my further opinion that N.D.C.C. section 5-01-07 requires written approval of a beer or liquor license by a board of township supervisors prior to renewal of the license by the county board of commissioners every third year following its original issuance.

III.

It is my further opinion that a board of township supervisors may grant or withhold its approval of a beer or liquor license pursuant to N.D.C.C. section 5-01-07 on the basis of written guidelines established by the board which promote the health, safety, morals, or general welfare of the people of the township.

- ANALYSES -

I.

N.D.C.C section 5-01-07 provides as follows:

5-01-07. TOWNSHIP BEER OR LIQUOR LICENSES. No retail beer or liquor license shall be issued in any organized township without the written consent of the board of township supervisors. Every third renewal of such license shall be reviewed and subject to approval by the board of township supervisors.

The statute prohibits the issuance of a beer or liquor license in an organized township unless written approval is first obtained from the board of township supervisors. An applicant who is seeking a beer or liquor license in an organized township outside of the corporate limits of a city must receive written consent from the township board of supervisors before being issued a county license. Township consent is also required for every third renewal of the license.

The mandatory intent of the statute is indicated by the word "shall" in both provisions. A review of the statute's legislative history, other relevant statutes, and case law pertaining to the issuance of beer and liquor licenses has revealed nothing which would conflict with the statute's compulsory nature. Therefore, it is my opinion that N.D.C.C. section 5-01-07 is mandatory in its application toward all beer and liquor licenses issued by a county board of commissioners for businesses located outside the corporate limits of a city.

## II.

The final sentence of N.D.C.C. section 5-01-07 provides that "Every third renewal of such license shall be reviewed and subject to approval by the board of township supervisors." The statute clearly requires township board approval for every third annual renewal after the initial issuance of a beer or liquor license.

When N.D.C.C. section 5-01-07 was originally enacted by the 1967 legislature, the second sentence of the statute provided: "This section shall not apply to renewals of such licenses." That provision of the statute was repealed by the 1969 legislature and replaced with the current language requiring township board approval for every third renewal of beer or liquor licenses.

The legislative history behind Senate Bill No. 456, which amended N.D.C.C. section 5-01-07, clearly indicates the intention that township boards be given the right to approve renewals of beer and liquor licenses every three years. Senator Rait, testifying as sponsor of the amending legislation, stated that this amendment will require the board of township supervisors be consulted every three years in the renewal of beer or liquor licenses. Hearings on Senate Bill 456 Before the Committee on Political Subdivisions, Forty-first Legislative Assembly (1969).

Therefore, it is my opinion that N.D.C.C. section 5-01-07 requires that written approval of the board of township supervisors be presented to the board of county commissioners prior to the renewal of a beer or liquor license in an organized township every third year after the issuance of the original license.

## III.

Although neither N.D.C.C. section 5-01-07, nor any other statute, sets forth standards to be followed by a board of township supervisors in granting or denying consent for a beer or liquor license in an organized township, the township board has the authority to establish such guidelines. N.D.C.C. section 5-01-07 explicitly gives the board of township supervisors the power to grant or withhold approval of the issuance of county liquor licenses and every third renewal thereof. Implicit in this grant of authority is the power to establish reasonable guidelines for determining whether or not to give approval for the issuance or renewal of a beer or liquor license.

N.D.C.C. section 58-06-01 also provides support for the board of township supervisors' authority to establish licensing approval guidelines. This statute provides, in part, as follows:

58-06-01. GENERAL POWERS AND DUTIES OF BOARD OF TOWNSHIP SUPERVISORS. The board of township supervisors shall have the following powers and duties:

1. To manage and control the affairs of the township not committed to other township officers.

\* \* \*

Another statutory basis for establishing license approval guidelines is found in N.D.C.C. section 58-03-11 concerning zoning authority within a township. N.D.C.C. section 58-03-11 provides, in part, as follows:

58-03-11. ESTABLISHMENT OF ZONING DISTRICTS - LIMITATION - SCOPE OF ZONING REGULATIONS AND RESTRICTIONS. For the purpose of promoting the health, safety, morals, or the general welfare . . . the board of township supervisors may establish one or more zoning districts and within such districts may . . . regulate and restrict the . . . construction . . . alteration, repair, or use of buildings and structures, the height . . . and size of buildings and structures, the percentage of lot that may be occupied . . . the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

\* \* \*

N.D.C.C. section 5-02-02 establishes specific state and local license qualifications for retail beer and liquor license applicants. Cities and counties must require that license applicants comply with the qualifications provisions of the statute. Cities and counties may also set forth additional requirements for retail licenses in the exercise of their police powers. Because a township's granting or withholding of consent for a beer or liquor license is equivalent to the issuance of a license, it appears that a board of township supervisors may establish guidelines for consent similar to those adopted by cities and counties for licensure.

Cities and counties have authority to regulate retail licenses and

licensees pursuant to N.D.C.C. section 5-02-09. The statute provides as follows:

5-02-09. LOCAL REGULATIONS. The local governing body by ordinance or resolution may regulate or restrict the operation of licensees including among other things determining the number of licenses to be granted, establishing health and safety standards for licensed premises, setting of hours and prohibition of dancing or various forms of entertainment on the premises.

The leading recent case involving the authority of a local licensing entity to adopt guidelines for the issuance or denial of retail beer or liquor licenses is *Mini Mart, Inc. v. City of Minot* 347 N.W.2d. 131 (N.D. 1984). In that case the North Dakota Supreme Court determined that although the Minot city council was vested by state law with discretion in issuing or denying liquor licenses, it was required to establish written criteria to be used in granting or denying a license. *Id.* at 138-141.

In *Mini Mart*- the Court upheld its previous decision in *Thielen v. Kostelecky* 287 N.W. 513 (N.D. 1939) by stating:

The Court in *Kostelecky* recognized that municipalities have been given the power by the State to exercise judgment and discretion in the granting or denial of liquor licenses. However, the Court also pointed out that, in order to make the grant of such power effectual, the municipality must enact ordinances reserving the legislative grant of discretion and prescribing reasonable rules and standards to govern the exercise of that discretion. *Mini Mart, Inc.* 347 N.W.2d. at 139.

The Court also quoted with approval its prior decision in *Kostelecky*

"When a municipal corporation is invested with power to license or regulate the sale of intoxicating liquors, it has implied authority to make all such ordinances as may be necessary to make the grant of power effectual and to preserve the public peace, good order and security against dangers arising from the traffic in such liquors. It is only required that such ordinances should be within the scope of the powers granted, and not unreasonable, unjust, or unduly oppressive, or unfairly discriminating." 33 C.J., pp. 522-524.

The power "to regulate the retail sale of alcohol and alcoholic beverages" conferred upon the governing board of a city includes the power to prescribe such reasonable rules and impose such reasonable restrictions as to the manner and circumstances in which the business shall be conducted as will tend to promote order and protect the public from harm . . . The power "to regulate the retail sale of alcohol and alcoholic beverages" vests the governing board of a city with authority to prescribe reasonable rules concerning the premises where the business is to be carried on . . . and to refuse to issue a license where the proposed place of business is unfit according to the prescribed standards . . . *Mini Mart* 347 N.W.2d. at

139. Citations omitted. Emphasis contained in original.  
Quoting Kostelecky 287 N.W. at 517.

In conclusion, it is my opinion that a board of township supervisors may withhold its approval of a beer or liquor license pursuant to established written criteria adopted for granting or denying consent for the issuance or renewal of a beer or liquor license in an organized township. The board's guidelines must be uniformly applied and reasonable intended to promote the health, safety, morals, or general welfare of the people of the township.

Reasonable licensing standards include, but are not limited to, restricting the number of licenses to be approved or prohibiting liquor licenses in the township altogether by denying consent to all applicants. By enumerating certain types of guidelines which may be enacted, this opinion is not intended to prohibit or restrict other permissible regulatory criteria which may be established by a township board of supervisors.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. section 54-12-01. It governs the actions of public officials until such time as the questions presented are decided by the courts.

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