

STATE OF NORTH DAKOTA

OFFICE OF ATTORNEY GENERAL 89-13

Date issued: August 21, 1989

Requested by: Honorable John M. Olson  
Senate Minority Leader

- QUESTION PRESENTED -

Whether city and county governing bodies have the sole authority to determine what constitutes a state, multistate, or national event under the special Sunday alcoholic beverage permit provisions of N. D. C. C. ' 5-02-05. 1.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that city and county governing bodies have the sole authority to determine what constitutes a state, multistate, or national event under the special Sunday alcoholic beverage permit provisions of N. D. C. C. ' 5-02-05. 1.

- ANALYSIS -

N. D. C. C. ' 5-02-05. 1(1), as amended by the 1989 Legislature, provides:

Any city or county may issue a special Sunday event alcoholic beverage permit to a private club, lodge, restaurant, motel, or hotel, as defined under city ordinances or county resolutions and licensed as a retail alcoholic beverage establishment under chapter 5-02; or to a publicly owned or operated facility that serves as the headquarters for a state, multistate, or national event of a bona fide organization recognized by the governing body of the city or county in which the event is held. A county may not issue a permit under this section to a private club, lodge, restaurant, motel, or hotel located within the geographical boundaries of a city.

This statute, therefore, authorizes cities and counties to issue special Sunday event liquor permits for state, multistate, and national events.

The statute provides that the city or county governing body determines what constitutes an event that is "state, multistate, or national" in nature. N. D. C. C. ' 5-02-05. 1(4) states that "[t]he special Sunday alcoholic beverage permit may not be granted to allow the distribution of alcoholic beverages at gatherings or meetings which, in the opinion of the governing body of the city

or county, are primarily local in nature." (Emphasis supplied.) Under the statute, therefore, the city or county governing board has the sole authority to determine when an event is a "state, multistate, or national" event.

This statute could be considered ambiguous, however, with regard to what is an "event" and who determines whether something is an "event." N. D. C. C. ch. 5-02 does not define the term "event," and that term is not defined elsewhere in the North Dakota Century Code. Because N. D. C. C. ' 5-02-05.1, therefore, is ambiguous, its legislative history may be considered in interpreting the statute.

Before the 1989 amendments to N. D. C. C. ' 5-02-05.1 became effective, N. D. C. C. ' 5-02-05.1 authorized local governing bodies to issue "special Sunday convention" liquor permits to "private club[s], lodge[s], motel[s, and] hotel[s]" which had liquor licenses and to "civic center[s]" serving as "the headquarters for a state, multistate, or national convention of a bona fide organization recognized by the governing body of the city or county in which the convention is held." N. D. C. C. ' 5-02-05.1(1) (1987). The statute did not contain the word "event."

The 1989 Legislature passed two bills amending section 5-02-05.1 and adding the word "event" to that section. See 1989 N. D. Sess. Laws ch. 94 (House Bill No. 1562); 1989 N. D. Sess. Laws ch. 93, ' 2 (Senate Bill No. 2400). House Bill No. 1562 contained the basic provisions of the amendments that are now codified in section 5-02-05.1.

Representative Jim Peterson introduced House Bill No. 1562 in order to have the law clearly support what many local governing boards were already doing with regard to special Sunday liquor permits. Representative Peterson testified to a House committee hearing the bill that many cities and counties were recognizing softball tournaments and similar events as "conventions" in order to issue special Sunday liquor permits. Representative Peterson stated that amending the statute to include state, multistate, and national "events" would authorize the issuance of these permits to softball tournaments, fairs, and other events. Hearing on H. 1562 Before the House Comm. on Political Subdivisions, 51st Leg. (Feb. 9, 1989) (Tape 3, Side A) (statements of Rep. Jim Peterson).

House Bill No. 1562, as originally introduced, left the term "convention" in the statute and added the words "or event" after "convention." During the House Political Subdivisions Committee's initial hearing on the bill the committee amended out the "or event" language. Hearing on H. 1562 Before the House Comm. on Political Subdivisions, 51st Leg. (Feb. 2, 1989). A few days later the committee held a second hearing on the bill, and the committee then heard Representative Peterson's explanation of the meaning of the term "event," as used in the statute, and his testimony that the local governing bodies would determine what was an "event" for the purposes of the statute:

Representative Jim Peterson: "The language [of House Bill No. 1562] is very protective. It goes for local control. Lines 14, 15, and 16 and part of 17 [of the bill state that to receive a special Sunday permit, facilities] have got to be or serve as headquarters for a state, multistate, national convention or event. And event - the reason for "events" - every major city in the State of North Dakota has now taken to calling a softball tournament a 'convention' to issue the Sunday permits right now. And this is cleaning that up, and just making what they're now doing right. . . . I understand after this bill was heard there was considerable, considerable concern over what was an event. But event is well-described in lines 14, you know. You can't just, I heard a child's birthday or a grandson's birthday at the VFW, some towns would say that was an event -- not unless you can convince the fathers, city fathers and certainly not with the old language that's available in House 1562. . . ."

. . . .

Representative Haugen: "You feel an event then is a city softball tournament . . . ."

Peterson: "No. . . . It would have to be for a headquarters for a state, multistate, or national convention or event or a bona fide organization recognized by the governing body, city or county . . . in which the convention or event is held. . . . In other words, it could be whatever the local authority determined to be an event."

Chairman Lindgren: "It's your definition that it would be a state, multistate or national event?"

Peterson: "Absolutely. Absolutely. It's written right there."

. . . .

Chairman: "[T]he way you're reading this, you're viewing convention and event both to be described as state, multistate, or national. Am I correct?"

Peterson: "Yeah. I think we're right about that."

[The chairman then asked Representative Haugen whether an amendment taking out "convention" and substituting "event" would make him more comfortable with the bill.]

Haugen: "Well, at least that says what it is because when you go and follow the language down that tells me that the local governing body can state almost anything to be an event. Now if I'm reading that wrong, please correct me."

Peterson: "[The reason for the term 'event' is, for example, the air show in Minot.] That's an event. The softball tournaments that are going on in every major city when they're certain, the city fathers are now recognizing them as conventions, but they're events. But they've got to be state, multistate, or national as described previously."

Chairman: "If I understand correctly, I mean, your goal with this wasn't so much to expand it as it was to make legal what was being done. . . ."

Peterson: "To clean it up. [T]he word event . . . actually cleans up for these larger areas what they're doing already."

. . . .

Haugen: "[The law originally] dealt only with conventions and now we are saying any event and then we go on to say of a bona fide organization recognized by the governing body, and that to me leaves it wide open."

Peterson: "Well, do you think for two minutes, the city fathers are going to do anything but a bona fide organization."

Haugen: "Mr. Chairman, there are many times that the local governing bodies have an extreme amount of pressure put on them if they are to pick and choose which events they might allow."

Peterson: "Well, . . . it's spelled right out for state, multistate or national conventions or events."

. . . .

Peterson: "We've got to put it in the local people's hands. They're closest to it."

Hearing on H. 1562 Before the House Comm. on Political Subdivisions, 51st Leg. (Feb. 9, 1989) (Tape 3, Side A) (emphasis supplied). The committee then passed the amendment it discussed, substituting the word "event" for the word "convention," and gave the bill a "do pass" recommendation. Id.

This legislative history establishes both that a special Sunday event permit

may be issued only for state, multistate, and national events and that what is a state, multistate, or national event is a matter for local authorities to decide. In his testimony before the Legislature, Representative Peterson (the sponsor of the bill that introduced the "event" language) stated several times that this is a matter of local control.

Therefore, it is my opinion that N. D. C. C. ' 5-02-05.1, as clarified by the legislative history of House Bill No. 1562, permits city and county governing bodies to determine what is an "event" for which a special Sunday event alcoholic beverage permit may be issued. To comply with the law, however, the local governing bodies may only issue permits when an event is "state, multistate, or national" in nature. N. D. C. C. ' 5-02-05.1(4). Still, the local governing body is the authority that determines whether an event is "state, multistate, or national" in nature. Id. Those local governing bodies have the sole authority to make that determination.

- EFFECT -

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

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