

STATE OF NORTH DAKOTA

ATTORNEY GENERAL' S OPINION 90-05

Date issued: January 23, 1990

Requested by: Wayne P. Jones
Ransom County State' s Attorney

- QUESTION PRESENTED -

Whether North Dakota law permits delivery of beer to persons at locations other than the licensed premises with the cash sale being consummated off the premises.

- ATTORNEY GENERAL' S OPINION -

It is my opinion that North Dakota law does not permit delivery of beer to persons at locations other than the licensed premises with the cash sale being consummated off the premises, subject to specific provisions of law authorizing special event permits to be issued by local governing authorities.

- ANALYSIS -

N. D. C. C. ' 5-02-01 requires all persons engaging in the sale of alcoholic beverages at retail to secure an appropriate license from the Attorney General and the local governing body. This section provides:

5-02-01. State and local retail license required --
Exception. Except as otherwise provided in Section 5-02-01.1, 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 does not apply to public carriers engaged in interstate commerce.

North Dakota statutes and the North Dakota Administrative Code set forth various qualifications for a retail license. In addition to meeting other qualifications for a retail license, an applicant must establish that the building where business will be conducted meets sanitation and safety requirements. The applicant must also submit other information required by the Attorney General or local governing body. N. D. C. C. " 5-02-02(4) and (6).

An applicant for an off-sale alcoholic beverage license whose business is to be conducted in a gas station, grocery store, or convenience store must submit

a blueprint or diagram identifying the portion of the business which is to be licensed for the sale of alcoholic beverages. N.D.C.C. ' 5-02-02.1. The area identified must be separated from the non-licensed portion of the business. Id.

N. D. C. C. ' 5-01-01(5) defines the term "licensed premises." That section provides:

5-01-01. Definitions. In this title,

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5. "Licensed premises" means the premises on which beer, liquor, or alcoholic beverages are normally sold or dispensed and must be delineated by diagram or blueprint which must be included with the license application or the license renewal application.

By virtue of these provisions, the Legislature has evidenced a clear intent that a "licensed premises" be an identifiable area in which alcoholic beverages may be sold or dispensed.

The Office of Attorney General has adopted administrative rules to administer the alcoholic beverage statutes and further the intent of the Legislature set forth in those statutes. N. D. Admin. Code ' 10-08-01-01(3) provides:

10-08-01-01. Qualifications for license. No retail license shall be issued to any person, nor shall any such previously issued license be renewed or retained unless the applicant files a sworn statement upon the application showing the following qualifications:

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3. The applicant's building in which the business is to be conducted meets the local and state requirements regarding sanitation and safety, and a copy of such local and state reports regarding sanitation and safety is attached to the sworn application.

In addition, as part of the application process, an applicant for a retail alcoholic beverage license must submit to the Office of Attorney General, with the application, a diagram or blueprint of the premises to be licensed. N. D. Admin. Code ' 10-08-01-02(6).

Pursuant to N. D. C. C. ' 5-02-01, a person desiring to engage in the sale of alcoholic beverages at retail must secure an appropriate license from the Attorney General and the local governing body. The license issued by this office and which must be posted at the place of business contains the specific

language authorizing the licensee to sell alcoholic beverages at retail "at the premises located in" the licensee's county at a specific location.

The specific authorization set forth in the retail alcoholic beverage license and the statutory language limits the sale or dispensing of alcoholic beverages to the licensed premises. It is therefore my opinion that beer may not be delivered and the cash sale may not be consummated off the licensed premises. Subject to the specific provisions of law which may permit a local governing board to issue special event permits, such as N. D. C. C. ' 5-02-01.1, any sale or dispensing of alcoholic beverages by a retail alcoholic beverage licensee must occur within the licensed premises as defined and permitted by the retail alcoholic beverage license.

- 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 presented is decided by the courts.

Nicholas J. Spaeth
Attorney General

Assisted by: Robert P. Bennett
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