

**OPINION**  
**43-64**

July 13, 1943           (OPINION)

LIQUOR LICENSE

RE: Municipal Officers

I have your letter of July eighth, making certain inquiries with reference to the violation of certain statutes of the State of North Dakota. I will attempt to answer these inquiries in the order in which you make them.

You first inquire whether it is legal for a councilman to sell liquor. We have recently held that a councilman cannot be granted a license to sell liquor by the city of which he is a councilman. This is on the ground that as a councilman he is issuing the license, and as a licensee, he is doing business with the council of which he is a member, and that is prohibited by law. We are enclosing herewith a copy of that opinion given to the mayor of Park River.

Your next question is whether a pool room can be open after twelve o'clock. There isn't anything in the state law, prohibiting a pool hall being open after twelve o'clock midnight, except on Saturday nights. The law does prohibit a pool hall being open on Sunday. You also inquire whether it isn't illegal for pool halls and other businesses to sell liquor after twelve o'clock on Saturday night. Our Supreme Court has held that the sale of intoxicating beverages, including beer, is illegal on Sunday. Sunday commences at twelve o'clock midnight Saturday, and, therefore, the sale of intoxicating liquor, including beer, after twelve o'clock Saturday night, is absolutely illegal.

You next inquire whether it is legal for a member of the city council to hold a job as bookkeeper for the city. The same reasons which would prohibit a councilman from being a licensee of the city would prohibit him from holding a job as bookkeeper. In other words, it is illegal for a member of the city council to contract with himself. That would also prohibit granting himself a job as bookkeeper or as any other employee of the council.

You next inquire how many feet or yards a liquor store must be from a dance hall or place where dances are held. Under the provisions of Chapter 124 of the 1937 Session Laws, it is unlawful to hold or permit any dance or dancing in or on premises, or premises adjacent to, but connected with, by door, stairs, or other entrance, to a place where intoxicating liquor is sold as a beverage. It is not a matter of distance. If there is one place of business, where liquor is sold, and another place of business, separate and apart from the place where the liquor is sold, where dancing is conducted, it is legal. But, if both places are in the same building and are connected only by a door, then it is illegal to dance in such place, adjacent to, but connected by door, to the place where liquor is sold.

Your final question is whether card-playing is allowed in public places where liquor or beer is sold. If by card-playing, you mean gambling, it is illegal to gamble in any place in North Dakota, regardless of whether liquor is sold in such place or not. If the cards which you refer to are not used for gambling, but merely for amusement, then no law is being violated. If any of the laws of the State are being violated to your knowledge, then I would suggest that you take the matter up with the State's Attorney of your county. This office, with very limited help, cannot, of course, enforce the law in all the fifty-three counties of the State. That is what we have State's Attorneys for in each county, and sheriffs, and police officers. We are here to assist such officers in the performance of their duty, but the primary responsibility is theirs. Most of the State's Attorneys and sheriffs and other officers of the state are very, very willing to cooperate in seeing that the laws are enforced.

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