

**OPINION**  
**44-75**

March 7, 1944      (OPINION)

MUNICIPAL OFFICERS

RE: Cannot issue Liquor Licenses to Themselves

Answering your inquiry as to whether a member of the city council can legally be granted a liquor license by the state, let me say that there is no provision in the liquor or beer acts, which prohibits a members of the city council from being the holder of a liquor or beer license. Neither is there any provision which prohibits a liquor or beer dealer from serving on the city council. Furthermore, a license has been held to be merely a permit of privilege to do certain things and is not, strictly speaking, a contract. However, the obligation to pay the license fee involves a contract obligation, and in my opinion, the statute making it a misdemeanor for any public officer to be interested in any contract, directly or indirectly, which it is his duty as a public officer to take part in making, would prevent a liquor or beer dealer from acting as a member of the city council which grants such license.

This question has not been passed upon by our courts, and, therefor, is not entirely free from doubt. It would seem, however, that the better reasoning would be that the application of a member of the city council for a liquor or beer license cannot be granted under the statute mentioned above. See section 9829 of the 1913 Compiled Laws. See also sections 3618 and 3760 of the 1913 Compiled Laws.

If we should hold that a member of the city council can legally be licensed as a liquor or beer dealer, you can readily see the situation which would be created. Such member of the council could, and no doubt would, immediately commence to use his influence for securing a lower license fee; for longer hours, and generally, more lenient ordinances regulating his liquor or beer business. This would clearly be contrary to good, sound public policy.

The courts have time and again held that "there is no inherent right in a citizen to sell intoxicating liquors. It is not a privilege of a citizen of the state or a citizen of the United States. As it is a business attended with danger to the community, it may, as already said, be entirely prohibited or be permitted under such conditions which will limit to the utmost its evils. The manner and extent of regulation rests in the discretion of the governing authority". See *Crowley v. Christianson*, 11 Supt. Ct. Rep.13.

Surely, under such circumstances, the governing authority, which has the power under our law to regulate the retail sale of intoxicating beverages, should not consist of the very same persons who are operating such business which is to be regulated. While this same rule might not be adopted in the case of a license to engage in some other business not inherently fraught with danger, in my opinion, the better reasoning leads us to the

conclusion that an application of a member of the city council for a liquor or beer license cannot legally be granted under the statute cited above.

The city council also hires the police officers, whose duty it is to enforce the ordinances and laws. It would be folly to suppose that such a peace officer is going to make the man who given him the employment obey the law with the same degree of strictness as he would make some stranger obey that law.

We have given an opinion to this same effect some months ago. Shortly thereafter, we were advised that, under a similar statute to the North Dakota statute above-referred to, Attorney General Burnquist of Minnesota arrived at the same conclusion, and held that a statute in Minnesota, which makes it a misdemeanor for a public officer to have any interest in a contract which it is his duty to help make, prevents such member of the city council from being granted a liquor license.

ALVIN C. STRUTZ  
Attorney General