

**OPINION  
45-160**

May 26, 1945           (OPINION)

INTOXICATING LIQUOR

RE: Sale to Indians - Minors

You have asked in your letter of May 22, whether a half-breed Indian who receives government aid, is allowed in a beer parlor and whether he may buy beer.

Under chapter 5-02 of the North Dakota Revised Code for 1943, dealing with manufacture, sale and distribution of beer, we find section 5-0210, which provides:

No person shall sell beer to a minor, incompetent person, Indian as defined by federal law, or a person who is an inebriate or habitual drunkard."

Under chapter 5-03, dealing with the sale and taxation of liquor, section 5-0318 provides:

No person shall sell any liquor to a minor, incompetent person, Indian as defined by federal law, or a person who is an inebriate, or habitual drunkard."

Under Section 5 of Senate Bill 109, one of the acts prohibited is the sale of "beer, alcohol or alcoholic beverages to an Indian as defined by federal law." You will thus note that under the provisions of our statute now dealing with the sale of intoxicating liquor, whether beer or alcohol in other forms, the sale thereof is prohibited to an Indian as defined by federal law.

Section 479 of Title 25 of the Laws of the United States, dealing with Indians, defines that term as follows:

The term Indian as used in sections 461 to 479 of this title shall include all persons of Indian descent who are members of any recognized Indian tribe now under federal jurisdiction and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood."

From the above definition, it would appear that the person you refer to as a half-breed Indian is an Indian as defined by federal law, and consequently is not entitled to buy beer or other alcoholic beverages. Accordingly, it is the opinion of this office that a sale of any beer or alcoholic beverage to any person of half Indian blood is a violation of our statute.

NELS G. JOHNSON

Attorney General