

OPINION
45-17

June 15, 1945 (OPINION)

ALCOHOLIC BEVERAGES

RE: Sales - Number of Licenses

This office is in receipt of your letter of June 13, 1945. You say that there are two liquor stores in your village and that another party is applying for a license to open and operate a third liquor store. You further say that no ordinance has been enacted limiting the number of such stores, but that the trustees of your village feel that two such stores are sufficient. You desire to be informed whether the board of trustees of your village may refuse to license more liquor stores in the absence of an ordinance limiting the number thereof.

Subsection 29 of section 40-0501 of the North Dakota Revised Code of 1943 provides:

"The governing body of the municipality shall have the power to regulate the use and to regulate and license the sale of alcoholic beverages subject to the provisions contained in the title Alcoholic Beverages."

And section 5-0320 of the revised code provides:

"The governing body of any city, village, or county may revoke licenses for cause and may regulate the sale of liquor within its jurisdiction subject to review by the courts of this state."

It is the opinion of this office that even in the absence of an ordinance limiting the number of licenses which may be issued for operation of liquor stores, the governing body of a city or village is vested with discretion and authority as to the issuance of such licenses. It is, of course, advisable that an ordinance be enacted by your village placing a limit on the number of such stores, but, as stated, until such an ordinance has been enacted, it is our opinion that the governing board of your village may, by resolution, place a limit on the number of places licensed to sell liquor.

For it has been held that, "No one has an inherent right to a license to sell intoxicating liquor, and when a statute makes the granting of a license to sell liquors dependent on the approval of the applicant by some officer or board, no one can demand such license without first obtaining the required approval." 30 Am. Jurisprudence, sec 113, P. 317; Brown v. Jugenheimer (Neb.) 116 N.W. 966, 18 L.R.A. (N.S.)386.

And it has been also held that, "legislative power of a city council to license, regulate, and tax carries with it a wide discretion as to the persons and places to be licensed and the number of licenses to be granted, which discretion may be exercised in each case when an application is made if the matter has not been regulated by general

ordinance." 30 Am. Jurisprudence, sec. 121, p. 320; Sherlock v. Stuart (Mich.) 55 N.W. 845, 21 L.R.A. 580; Perry v. Salt Lake City 7 Utah 143, 11 L.R.A. 446.

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