

OPINION
46-183

June 5, 1946 (OPINION)

LIQUOR DEALERS

RE: Retailers May Not Purchase From Other Retailers

Your letter of June 3, 1946, relative to the purchase of liquor from wholesale concerns, has been referred to me for consideration and reply.

The first question you ask is whether a retail dealer is required to purchase his liquor from a wholesale liquor house, or if he may make purchases for resale from another retail dealer.

This question is not answered directly by the North Dakota law; however, it is my opinion that, from a review of chapter 5-03 of the 1943 Code, it is implied that a retail dealer must purchase his stock from a licensed wholesale dealer. It is quite clear from the statute that a retailer cannot make such sales to another retailer, as this practice would constitute him a wholesaler and necessitate his obtaining the proper state license. Section 5-0302 further provides that no person shall hold a wholesaler and retailer license at the same time.

I might also add that the laws concerning the purchase and use of tax stamps and wholesaler's reports would further substantiate the holding that retailers cannot make sales to another retailer without subjecting themselves to possible criminal liability.

You also ask if it is permissible for children to enter a beer or liquor bar and purchase a bottle of pop, if they do not loaf or loiter therein after making the purchase. Chapter 50 of the 1945 Session Laws states in part: "No person under 21 years of age shall be permitted in any room wherein is operated or maintained a bar on or over which beer or alcohol and alcoholic beverages are sold, furnished or distributed." We realize that in the small towns of North Dakota beer and liquor parlors are sometimes the only places that handle ice cream and soft drinks. However, the law is very specific in this matter and makes no exceptions or provisions for minors to enter such places.

Your last question is whether or not a city council may issue three liquor licenses in a town of the size of Bathgate. Section 5-0207 and section 5-0303 of the 1943 Code empower cities and villages to license retailers of beer and liquor, and leave the number of licenses to be issued to the discretion of the governing body.

I trust that this information answers your inquiries satisfactorily.

NELS G. JOHNSON

Attorney General