

OPINION
49-116

April 5, 1949 (OPINION)

LIQUOR

RE: Cashing of Checks by Licensed Dealers

Your letter of April 2, 1949, re the above matter, has been received and referred to my desk for attention.

Of course, cities and villages have only such powers as are given by statute, or such as are necessarily implied by statute. City of Fargo v. Sathre, Attorney General, 36 N. W. 2d 39.

Municipalities, including counties, have the right to regulate the sale of beer. (Se. 5-0207 and 5-0208 N.D.R.C.) The statute relating to the regulation of the sale of beer is found in section 5-0207 and is much more specific than that relative to the sale of liquor. This section provides in subsection 3 thereof:

"To regulate the business of vendors at retail of beer or ale authorized to be sold by this chapter in their respective jurisdictions, subject to review by the courts."

The power to enact an ordinance prohibiting retailer from accepting checks in payment for beer or liquor would have to be found in the sections cited by implication. We agree with you that probably the majority of bad checks issued in this state are cashed by liquor dealers. At least a good part of such bad checks are probably given by men who are under the influence of liquor and therefore do not realize that they are issuing unlawful checks. If liquor dealers would refuse to cash checks for those who are drinking, they would save themselves from losses, and the counties from complaints of the issuance of such checks. If liquor dealers were restricted to sales to such customers only as had money to pay for drinks bought, much of the sale to intoxicated persons would be prevented. Since such municipalities and counties have power to regulate the business of vendors of beer, it might be implied that they could lawfully enact ordinances prohibiting such vendors from accepting checks in payment for beer or liquors. Then if a retailer gets a bad check, he would be in no position to complain, since he himself committed a violation of law by accepting it. Much more might be said in favor of the proposed regulation, and it might find support in the general grant of powers to municipalities. Such an ordinance might well provide as a penalty the revocation of the retailer's license.

WALLACE E. WARNER

Attorney General