OPINION
49-122

May 6, 1949 (OPINION)

LIQUOR

RE: License Fees for Clubs

I have your letter addressed to the Attorney General dated April 23, 1949, in which you ask for an opinion as to the authority of the city commission to charge a lower fee for liquor licenses for private clubs than is charged for private liquor dealers.

C.J. 2d. 237. Authorities differ as to whether or not a bona fide club must obtain a license in order to sell liquor to its members.

30 Am. Jr. Sec. 308, states that a state may prohibit the selling and serving or dispensing of intoxicating liquors in clubs.

119 N.W. page 494. A number of court decisions have held that clubs are not required to pay a license fee to sell intoxicating drinks to their members. Also a great number have held that they must pay such fees. This clearly shows that a distinction between clubs and public bars exists.

It is well known that clubs exist which limit the number of members and select them with great care which own considerable property in common and in which the furnishing of food and drinks to the members for money is but one of the many conveniences which the members enjoy. The question whether a club is or is not a bona fide club can be raised in some instances; however, such a question does not alter the reasonable and clear cut distinction of a social or fraternal club from public bar or liquor store.

There have been numerous cases in which the question arose whether or not such clubs are required to have a license before they can dispense intoxicating beverages to is members for money. The question of the license requirement does not have any direct bearing in this opinion but it definitely shows that clubs are considered as something different than a public bar.

In an opinion from this office it was ruled that the liquor food and divorcement act did not apply to clubs. This again shows that there is a distinction made between clubs and public bars. Section 5-0319 of the North Dakota Revised Code of 1943 states the requirements a club must meet to obtain a license and then restricts the sale to members only. This again shows that there is a distinction made. The undisputable point is that a public bar operates primarily for the benefit which is in it while a club operates for the convenience of its members.

Section 5-0303 sets the fee for village or city at not less than $200.00 and not more than $2000.00, and other than incorporated limits not less than $100.00 and not more than $1000.00. Then it further states ******* "the license fee shall be the same to each individual within each of the said political subdivisions

respectively. The word, "individual," must be interpreted to mean the same as a person as defined in Sec. 5-0101 of the North Dakota Revised Code of 1943. The intent of the legislature obviously was to make the fees the same to all in a certain class in the political subdivision. This merely means that the municipality must, if it makes a distinction, make the distinction so that all clubs and lodges pay the same fee and that all public bars pay the same fee. The question of discrimination would be involved only if the governing body would grant a license to one club for a certain amount and to another club for a lesser or greater amount. The fourteenth amendment of the United States Constitution uses the word "person" when it refers to equal protection of the laws, and depriving of life, liberty and property without due process of law. In 16 C.J. 2d. Sec. 5-29, subsection 8, states that the imposition of a license fee is subject to the requirement of equal protection which is satisfied, however, by the uniformity and fairness as to all persons in similar circumstances. It further states in the same section, subsection "B" that trade occupations and professions and privileges may be classified for licensing purposes and if the classification is reasonable different classes may be differently taxed. Further, in Section C a general statement is made that occupation or license taxes must fall alike on all persons similarly situated and persons engaged in the same business where avocation may be reasonably classified for the purpose of exemption or different taxes.

The reasonable, fair and just distinction between a club is that a public bar is open to the public generally and operates for the profit in the business and assumingly treats everyone alike. Whereas, a club operates primarily for the convenience of its members and is not open to the public and does not primarily operate for the profit which is in it.

13 S.W. 113.

In the absence of a statute or ordinance making a distinction or exemption to clubs and where the ordinance only sets forth that every person dispensing intoxication drinks must be licensed the court held that this would not apply to clubs. This again shows that a distinction exists.

This office has made no attempt in this opinion as to the advisability of such classification or distinction. In this opinion we are only discussing the legality of such a classification.

It is my opinion that a municipality may make a classification and distinction between public bars and clubs for the purpose of license fees.

WALLACE E. WARNER

Attorney General