

OPINION
61-14

July 10, 1961 (OPINION)

ALCOHOLIC BEVERAGES

RE: Bottle Clubs - Licensed Retail Liquor Establishments

Your letter dated July 5, 1961, regarding "bottle clubs," has been received by this office. You relate to us that the Grand Forks County Commissioners have issued a license to operate as a bottle club to a private corporate entity in the county under the new "bottle club" law, enacted by the 1961 Legislative Assembly as House Bill No. 643, and now codified in the 1961 Session Laws as Chapter 104.

You state that there is some confusion in your area as to the standards, qualifications, and rules or regulations which may be applicable to the "bottle clubs," and that the prime question appears to revolve around the closing hours of such type clubs. You have requested the opinion of this office on the matter.

On June 21, this office in a letter written by Wesley N. Harry to Carlton Nelson, Grand Forks County State's Attorney, set down our basic position or views in regard to the application of Chapter 104 (House Bill 643) to "bottle clubs" operating within this state. We see no need at this time to take any substantially different position than that indicated in the June 21, 1961 letter.

In that letter we indicated that the apparent legislative intent was to treat "bottle clubs" in the same manner as licensed retail liquor establishments. This position is supported by the provisions of section 1 of Chapter 104 and the legislative intent is clear and specific in that paragraph and provides that:

LICENSE AND REGULATION OF BOTTLE CLUBS - DEFINITION - PENALTY. All bottle clubs shall be licensed by a political subdivision in the same manner and for the same fee as is provided in section 5-03-03 for the licensing of persons engaging in the retail sale of liquor. In addition, a bottle club shall also be licensed annually by the attorney general, who may prescribe such standards and qualifications for such license as he may deem necessary. The fee for the license issued by the attorney general shall be one hundred dollars annually."

In Section 1 of Chapter 104 provision is made that the Attorney General may prescribe such standards and qualifications as he may deem necessary. This does not mean that he must prescribe standards or qualifications. Since the Legislature obviously intended to treat "bottle clubs" in the same manner and in the same way as retail liquor establishments under the provisions of section 5-03-03 of the North Dakota Century Code (which is specifically mentioned in Section 1 of Chapter 104), it would appear unnecessary to set up different standards for "bottle clubs" than are already existing for

retail liquor establishments. Also, in the June 21, 1961, letter on page three, the general applicability of the law was considered in regard to the last paragraph of Section 1 of Chapter 104. There we noted that in regard to suspension and revocation of a license, section 5-03-20 or chapter 5-05 were specifically designated as being applicable to "bottle clubs."

Now, since chapter 5-05 of the North Dakota Century Code is the general law providing for the licensing and regulation of the sale of liquor in this state, and further, since section 5-05-09 of the North Dakota Century Code provides specific regulations for the sale of liquors, therefore all the provisions of that section, including subsections 1, 2, and 3, would be applicable to the "bottle clubs" also. We note in this connection that subsection 1 of 5-05-09 provides the following:

REGULATIONS GOVERNING SALE. No person in this state shall sell or deliver alcoholic beverages to a person under the age of twenty-one years, an incompetent person, a habitual drunkard, or an intoxicated person. In addition to the above provisions of this section no holder of a license authorizing the sale at retail of alcoholic beverages, or any servant, agent, or employee of the licensee, shall do any of the following upon the licensed premises:

1. Sell or permit the consumption of alcoholic beverages on any day at any time when such sale or consumption is prohibited by law;

. . . ."

It would appear clear that this subsection in effect sets the closing time of retail liquor licensees by prohibiting the sale or consumption of alcoholic beverages on any day and at any time when such sale is prohibited by law. To carry this one step further, then, we refer you to section 5-01-23 of the North Dakota Century Code which provides the following:

HOURS OF SALE. It shall be unlawful for any place licensed to retail alcoholic beverages to sell, give away, or permit to be consumed in any such place any alcoholic beverages between the hours of one o'clock a.m. and eight o'clock a.m."

It is our position, supported by both the law, reason, and logic, that section 5-01-23 in providing for the closing hours, is one of the prohibitions of law referred to in section 5-05-09 of the North Dakota Century Code, thus the one o'clock a.m. closing time is applicable to "bottle clubs."

In conclusion then, it is the opinion of this office, that since the Legislature has clearly indicated its intent to treat "bottle clubs" the same as licensed retail liquor establishments, then said "bottle clubs" must comply with the same statutes, rules, regulations, standards, and qualifications as such retail liquor establishments. This compliance then would necessarily include the formal licensing requirements and the regular state closing hours. It would also follow, for the reasons given, that since the provisions of chapter

5-05 in regard to suspension or revocation of a licensee are specifically made a part of Chapter 104, and since section 5-05-09 provides regulations making it unlawful to sell, etc., liquors at times or days prohibited by law, and that one of the conditions in said section relates to the times when alcohol may be sold, we can arrive at no other decision than that indicated in this opinion.

LESLIE R. BURGUM

Attorney General