

**OPINION
61-231**

September 13, 1961 (OPINION)

SUNDAY LAWS

RE: Cities and Villages - Regulation of Store Hours

This is in reply to your letter of September 8, 1961, concerning section 40-05-03 of the North Dakota Century Code. You ask our interpretation of section 40-05-03 with regard to the right of municipalities to establish and regulate store hours on Sunday.

Section 40-05-03 of the North Dakota Century Code provides:

CITIES HAVING POPULATION OF FIFTEEN THOUSAND MAY PROVIDE FOR REGULATION AND INSPECTION OF FOOD MARKETS. The governing body of any city having a population of fifteen thousand or more may enact ordinances providing for the regulation and inspection of food markets, stores, and other places where food intended for human consumption is sold at retail, and may prohibit the operation of such food markets, stores, and other places on Sundays and legal holidays, we believe such cities may also regulate store hours on Sundays. The power to regulate or even prohibit the operation of such food markets on Sundays would certainly include the lesser power to establish and regulate the store hours on Sundays.

We are also aware of the provisions of section 12-21-15(4) of the North Dakota Century Code which provides:

The first day of the week being by general consent set apart for rest and religious uses, the following acts are forbidden to be done on that day, the doing of any of which is Sabbath breaking:

. . . .

4. All manner of public selling, or offering or exposing for sale publicly, or any commodity, except that meats and fish may be sold at any time before ten o'clock a.m., and foods may be sold to be eaten upon the premises where sold, and drugs, medicines, surgical appliances, milk, ice cream and soda fountain dispensations, fruits, candy and confectionery, tobacco and cigars, newspapers and magazines may be sold at any time of the day. None of said articles or commodities shall be sold in any billiard hall, pool hall, bowling alley, saloon, or any other place where gaming of any kind is conducted unless said gaming is discontinued from twelve o'clock midnight on Saturday until six o'clock a.m. on Monday; and

. . . ."

Under the provisions of section 12-21-15(4) the state Legislature has

seen fit to regulate Sunday selling. The municipality has no authority to enlarge upon these regulations.

Should an ordinance be enacted by a municipality which had the effect of attempting to enlarge or increase either the types of food which may be sold or the hours during which they may be sold and thus attempt to abrogate the provisions of section 12-21-15(4) it would be of no effect. In those instances in which the state has assumed authority, the regulations of the local government must yield to those of the state government. However, we believe that cities having a population of fifteen thousand or more may further restrict the selling of food for human consumption at retail under the provisions of section 40-05-03 of the North Dakota Century Code quoted above. In such an instance the city would not be attempting to abrogate the state statute but would, under statutory authority, further limit selling on Sunday.

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