

OPINION
61-28

December 19, 1961 (OPINION)

CIGARETTES

RE: Cigarette Machines - Sales to Minors

Your letter dated December 11, 1961, has been received by this office.

You state that the City of Wimbledon would appreciate an opinion on the legality of having coin operated cigarette machines placed in restaurants. You also ask whose responsibility it is to safeguard the minors from purchasing cigarettes from these machines.

The 1961 Legislature transferred the cigarette licensing functions from the State Laboratories to the Attorney General's Office, Licensing Division. The appropriate new statutes are found in chapter 57-36 of the 1961 Pocket Supplement to the North Dakota Century Code. We point out specifically the provisions of section 57-36-04 in regards to revocation of a license, and also the provisions of section 57-36-05, the whole chapter directly on the licensee, whoever it may be. In other words, the license must first be secured, and then the proprietor or operator of the premises must comply with all the provisions of the law regarding the sale of cigarettes, which includes the prohibition of selling cigarettes to minors found in chapter 12-43 of the North Dakota Century Code, and which provides at section 12-43-01 the following:

SALE OF CIGARETTES, TOBACCO, OR SNUFF TO MINORS PROHIBITED. No person, directly or indirectly, shall sell, exchange, barter, dispose of, or give or furnish to, or buy or procure for, any person under the age of twenty-one years, any cigarette or any cigarette paper or wrapper prepared or designed to be used for filling with tobacco for smoking, nor any cigar or tobacco in any form, nor any snuff or a substitute therefor, under whatever name the same may be called."

Also, section 12-43-01.1 of the North Dakota Century Code provides the basic legal responsibility of sale from vending machines as follows:

PROPRIETOR OF PLACE OF BUSINESS RESPONSIBLE FOR LEGALITY OF SALE OF TOBACCO FROM VENDING MACHINES. The responsibility for the legality of the sale from vending machines of cigarettes or other tobacco products to persons prohibited from purchasing such products in section 12-43-01 shall be upon the proprietor or operator of the place of business wherein such vending machine is located. Any proprietor or operator of a place of business wherein a cigarette or tobacco vending machine is located who allows sales of cigarettes or tobacco through such machine to persons prohibited from purchasing cigarettes or tobacco in section 12-43-01 shall be punished in the manner

provided in section 12-43-09.

All cigarette or tobacco vending machines shall have a sign posted thereon giving notice that persons under the age limits provided in section 12-43-01 shall be prohibited from purchasing cigarettes or tobacco from such machines."

Therefore, it is the opinion of this office that the statutes referred to clearly put the responsibility of cigarette sales from vending machines on the proprietor or operator of the premises on which the machines are located. It is also our opinion that cigarette vending machines are permissible on restaurant premises for the reasons stated.

LESLIE R. BURGUM

Attorney General