

N.D.A.G. Letter to Mehrer (Sep. 12, 1985)

September 12, 1985

Mr. Owen K. Mehrer
Stark County State's Attorney
P. O. Box 130
Dickinson, North Dakota 58601

Dear Owen:

Thank you for your letters of July 5, 1985, and July 30, 1985, requesting an opinion as to whether businesses which engage in the business of renting video movie tapes during the business week may remain open for that purpose on a Sunday. I apologize for the delay in responding to you. However, along with our staff attorneys, I have given this matter serious consideration and close scrutiny.

To determine whether a particular business may remain open on a Sunday, one must consult the list of permissible businesses as found at N.D.C.C. § 12.1-30-03. This particular statute lists 37 businesses which may operate in that business' usual manner, location and for its usual purpose on a Sunday. In reviewing this list, I am unable to find any business description which would satisfy that business described in your letter; namely, a business which regularly and usually engages in the rental of video movie tapes.

I realize that N.D.C.C. § 12.1-30-02(30) prohibits the sale of video tapes, but allows the rental of such items. However, this section of law is clearly contingent upon the business in question being allowed to operate as provided for in N.D.C.C. § 12.1-30-03.

In other words, for a business to legally rent a video movie tape on a Sunday, that business must be specifically allowed to operate on a Sunday. In order to make this determination, we must consult N.D.C.C. § 12.1-30-03. With respect to businesses which engage in the rental of video movie tapes, no description provided in this particular statute allows such businesses to operate on a Sunday.

This conclusion is further strengthened by a review of the legislative history behind the recent amendments to the North Dakota Sunday Closing Law. According to the legislative history, an amendment was presented to the Senate Industry, Business and Labor Committee on February 5, 1985, which would have added the following business to the list of businesses allowed to operate on a Sunday:

Stores that primarily sell or rent aural or video recordings, records, or tapes, and the equipment therefor.

Although the available legislative history does not indicate the reasons this amendment was not adopted, the fact clearly remains that the Legislature did not enact this or any

other specific exception allowing such businesses to operate on a Sunday despite the fact the opportunity was presented to the Legislature to do exactly that.

It may be that the failure to include video recordings businesses in the list of businesses allowed to operate on a Sunday was a matter of legislative oversight. However, the statutes are quite clear and I simply do not have the authority to ignore the Legislature's actions in this area. Instead, any attempt to remedy any legislative oversight must be addressed by the next session of the Legislature.

Sincerely,

Nicholas J. Spaeth

vkk