

**N.D.A.G. Letter to Martinson (Oct. 9, 1985)**

October 9, 1985

Honorable Robert W. Martinson  
District 49  
P.O. Box 2296  
Bismarck, ND 58502

Dear Bob:

Thank you for your letter of August 23, 1985, requesting information on whether the North Dakota National Guard needs liquor licenses to operate the unit clubs.

The North Dakota National Guard is a state agency. As a state agency, it is prohibited from engaging in the sale of alcohol. N.D. Const. Art. X, § 18, states, in part:

The state, any county or city may make internal improvements and may engage in any industry, enterprise or business, not prohibited by article XX of the constitution. . .

N.D. Const. Art. XX prohibits the sale or offer of any alcoholic beverage. While N.D. Const. Art. XX was repealed in 1932, a North Dakota Supreme Court case, Egbert v. City of Dunseith, 24 N.W.2d 907 (1946) discussed the relationship between N.D. Const. Article XX and Section 185 (what is now N.D. Const. Art. X, § 18). That Court stated that when Section 185 was adopted it was the intent of the people that the state not engage in the sale of alcoholic beverages. Egbert, at 910.

This prohibition does not mean that individuals who are members of the National Guard could not set up and operate "unit clubs" which are not a part of the National Guard. However, these "clubs" would be required to meet the liquor licensing requirements of N.D.C.C. § 5-02-01, which is attached for your information. The unit clubs would also have to meet any of the other state and local tax, health, safety, and other laws as applicable to any private liquor establishment. Further, the unit clubs may also be subject to restrictions in a lease by the city or state as owner of the unit armory.

If you require any further information, do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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