

N.D.A.G. Letter to Jones (March 3, 1987)

March 3, 1987

Honorable Kent Jones
Commissioner of Agriculture
Department of Agriculture
State Capitol
Bismarck ND 58505

Dear Commissioner Jones:

Thank you for your letter of February 18, 1987, concerning suspension or revocation of beekeeping licenses.

N.D.C.C. § 4-12.2-22 lists available remedies for violation of the beekeeping laws. The remedies listed include a class A misdemeanor for violation of any of the beekeeping laws; a civil penalty not to exceed \$5,000 for each violation; civil action by the Department; and authority for the commissioner to refuse to grant a license to any person found guilty of repeated violations of the beekeeping laws. Nowhere in N.D.C.C. Ch. 4-12.2 is the commissioner given authority to suspend or revoke licenses.

Generally, however, a license may also be revoked in the exercise of the police power of the state whether or not the power to revoke is expressly or impliedly reserved in the licensing statute or in the certificate of license itself. The power of the state to license includes the power to revoke. However, usually express provision is made for revocation; see 53 CJS Licenses, 44 (1948); 51 Am.Jur.2d Licenses and Permits, 58 (1970).

It has been held that if a property right is involved, a license cannot be revoked at the pleasure of the licensing agency. Additionally, it has been held that where a penalty is provided for punishing a violation of the license regulations by fine or imprisonment, the penalty is exclusive. 53 CJS Licenses, 53. N.D.C.C. § 4-12.2-22 does set forth the penalties and other remedies for violation of N.D.C.C. Ch. 4-12.2. Suspension and revocation do not appear in that section. Therefore, suspension and revocation, it may be argued, are not an available remedy.

Nevertheless, suspension and revocation may still be appropriate under an exercise of the police power. Numerous statutes appear to have been construed on the theory that revocation of a license for cause is not invoked as a punishment, but pursuant to the police powers as an exercise of discretion in resolving the issue of whether the licensee truly qualifies for the license. Thus, it has been held that revocation of a restaurant license for failure to comply with sanitary regulations prescribed by ordinance was not precluded by the fact that the provisions authorizing the enactment of the ordinance restricted penalties for violation of ordinances to fine or imprisonment. See 51 Am.Jur.2d Licenses and Permits, 58.

Nevertheless, under specific legislation and circumstances, courts may still look on revocation as "additional punishment" so as to be precluded by a penalty provision considered to be exclusive. *Id.*

Therefore, the Department of Agriculture may have the power to suspend and revoke a license under its general police power authority in cases where it is clear that the qualifications of the licensee are in question, perhaps for such reasons as health and safety issues or fraud in the licensing process. But, if the Department is merely punishing the licensee for violation of the laws regulating the activities of the licensee and the issue is not qualification for license, the statutory penalties are probably exclusive.

In conclusion, the Department of Agriculture, for violation of the beekeeping laws may file a criminal complaint; take administrative action and impose civil penalties; take administrative action and then refuse to grant a license (in the future) to a repeat violator of the beekeeping laws, or take appropriate civil action against the violator. However, for most violations of N.D.C.C. Ch. 4-12.2, where the qualifications of the licensee are not involved, suspension or revocation is not a remedy. If suspension or revocation are desired remedies, the Legislative Assembly would have to amend N.D.C.C. Ch. 4-12.2.

Sincerely,

Nicholas J. Spaeth

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