

N.D.A.G. Letter to Whitman (June 25, 1991)

June 25, 1991

Mr. Charles C. Whitman
Bismarck City Attorney
P.O. Box 5503
Bismarck, ND 58502-5503

Dear Mr. Whitman:

Thank you for your June 17, 1991, letter concerning teen functions on licensed liquor establishments. You have asked for my thoughts and concerns on this subject.

As you are aware, both N.D.C.C. §§ 5-01-08 and 5-02-06 generally prohibit a person under the age of 21 years from entering a licensed premises where alcoholic beverages are "being sold or displayed." I see no prohibition for the entry of persons under the age of 21 years upon a licensed premises if no alcoholic beverages are being sold or displayed on that premises.

I believe some of my concerns in permitting persons under the age of 21 years to enter a premises licensed to sell alcoholic beverages have been conveyed to you in earlier contacts with members of my staff. A state retail alcoholic beverage license requires the applicant to submit a blueprint or floor plan diagram of the premises to be licensed. I am concerned that, in an effort to permit underage patrons to enter a licensed premises, a retail licensee would designate a portion of the licensed premises as an area where alcoholic beverages may not be sold or displayed but continue to sell or display such beverages in the remaining portion of the premises. I believe that the procedures you have outlined in your letter to me describing the removal of all liquor and signs from the bar area is both appropriate and necessary to ensure compliance with the state retail alcoholic beverage laws. To permit persons under the age of 21 years to enter the retail alcoholic beverage establishment requires assurances that alcoholic beverages will not be sold or displayed in the licensed premises at any time during the scheduled function.

It is my understanding that a question had been raised as to whether a licensee could be allowed to be unlicensed for one day a week to permit the teenage function to be conducted on the premises. I know of no state law which authorizes intermittent state licensing of alcoholic beverage establishments. Rather, the state alcoholic beverage license is issued for a period of one year. To ensure that a violation of N.D.C.C. §§ 5-01-08 and 5-02-06 will not occur, the licensee must ensure that no alcoholic beverages will be sold or displayed on the licensed premises when such premises are to be used for the function described in your letter to me.

I agree with you that strict controls should be placed upon any liquor establishment which desires to utilize its premises for events frequented by persons under the age of 21 years.

I must assume that the alcoholic beverage establishment would welcome these strict controls to protect itself from a violation of the state and local alcoholic beverage laws which could result in a loss of that establishment's license. These strict controls should include, as a minimum, the complete removal of all alcoholic beverages from any area within the licensed premises which may be frequented by persons under the age of 21 years. If this removal requires storage of all alcoholic beverages in a room inaccessible to patrons of the establishment, this requirement can be imposed upon the licensee as a condition for authorization to conduct the function on the premises. In addition, I believe that the city would have authority to impose additional conditions the city may deem reasonably necessary to ensure both total separation of the alcoholic beverages from patrons of the function and that no alcoholic beverages will be sold or displayed on the licensed premises.

I appreciate the effort you have made to provide additional opportunities for providing structured functions for the youth of our city. With the strict controls you have suggested, I believe that the goal you are seeking can be accomplished. The alcoholic beverage licensee, however, should understand that the licensee will be under close scrutiny to ensure that the licensee does not permit conduct on the licensed premises which would be in violation of North Dakota state law. Any such violation will be dealt with appropriately by this office, as well as, I assume, city officials.

Sincerely,

Nicholas J. Spaeth

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