

N.D.A.G. Letter to Swanson (Sep. 13, 1991)

September 13, 1991

Mr. Howard D. Swanson
Grand Forks City Attorney
P.O. Box 1950
Grand Forks, ND 58206-1950

Dear Mr. Swanson:

Thank you for your September 4, 1991, letter in which you have presented four questions pertaining to Sunday alcoholic beverage sales. For the purposes of clarity, I will respond to each question separately. Your first question is:

Question: May an alcoholic beverage licensee engage in the sale of alcoholic beverages on a Sunday under North Dakota Century Code § 5-02-01.1 if they are not otherwise eligible for a special Sunday alcoholic beverage permit under North Dakota Century Code § 5-02-05.1?

Response: No.

N.D.C.C. § 5-02-05 prohibits any person from dispensing or permitting the consumption of alcoholic beverages on licensed premises after 1:00 a.m. on Sundays except as permitted by sections 5-02-05.1 and 5-02-05.2. Section 5-02-05 provides:

5-02-05. Dispensing prohibited on certain days -- Penalty. Except as permitted by sections 5-02-05.1 and 5-02-05.2, any person who dispenses or permits the consumption of alcoholic beverages on licensed premises after one a.m. on Sundays, before eight a.m. on Mondays, or between the hours of one a.m. and eight a.m. on all other days of the week, or who dispenses alcoholic beverages or permits consumption of alcoholic beverages on licensed premises on Christmas Day, after one a.m. on Good Friday or Thanksgiving Day, or after six p.m. on Christmas Eve is guilty of a class A misdemeanor.

N.D.C.C. § 5-02-05 does not include N.D.C.C. § 5-02-01.1 as an exception to the general prohibition of Sunday alcoholic beverage sales. Dispensing or permitting of the consumption of alcoholic beverages on licensed premises on a Sunday is limited to those alcoholic beverage licensees who are authorized to engage in that practice pursuant to permits issued pursuant to N.D.C.C. §§ 5-02-05.1 and 5-02-05.2. A permit received under N.D.C.C. § 5-02-01.1 does not authorize a Sunday sale of alcoholic beverages unless the requirements of the special permit provisions are met.

Your second question is:

Question: May a City Council or Commission issue successive or multiple permits under North Dakota Century Code § 5-02-01.1 to an alcoholic beverage licensee during a calendar or licensing year, provided that the individual permit not exceed 14 days, including Sundays?

Response: Yes, subject to the requirements of relevant municipal ordinances.

N.D.C.C. § 5-02-01.1 does not restrict the number of permits which a licensee may obtain from the appropriate governing body. Each individual permit cannot be valid for a period greater than 14 days. However, municipal ordinances may exist which restrict the number of special event permits which can be received by an alcoholic beverage licensee under this section. In that case, the licensee will, of course, be subject to the municipal ordinance requirements.

Your third question is:

Question: Whether the provisions of North Dakota Century Code § 5-02-01.1 would allow an alcoholic beverage licensee to engage in the sale of alcoholic beverages for 14 consecutive Sundays under one permit?

Response: Yes, assuming that the alcoholic beverage licensee has received the appropriate permits under N.D.C.C. §§ 5-02-05.1 and 5-02-05.2.

Prior to the 1991 amendment, N.D.C.C. § 5-02-01.1 limited the duration of a special permit for a period no greater "than three consecutive days." The 1991 Legislative Assembly deleted the "consecutive days" limitation and increased the permit period to no greater than 14 days. Had the Legislative Assembly intended to limit the special permit to only 14 consecutive days, the deleted language would have been retained. However, by deleting the "consecutive days" language, the 1991 amendments to N.D.C.C. § 5-02-01.1 permits a special permit to be issued for no more than 14 days but each day of this time period need not run consecutively. As a result of this amendment, a special permit could be granted under N.D.C.C. § 5-02-01.1 for 14 Sundays. However, as I have previously noted, N.D.C.C. § 5-02-01.1 does not provide an independent basis to permit an alcoholic beverage licensee to sell or dispense alcoholic beverages on a Sunday. A licensee would still be required to obtain the appropriate permit under N.D.C.C. §§ 5-02-05.1 or 5-02-05.2.

Your fourth question is:

Question: Whether North Dakota Century Code § 12.1-30-04(37) authorizes the issuance of a special alcoholic beverage permit pursuant to North Dakota Century Code § 5-02-01.1 to an alcoholic beverage licensee that is not a private club, lodge, restaurant, motel, or hotel?

Response: No.

N.D.C.C. § 12.1-30-04(37) is merely one of the many exceptions to the Sunday closing law. These provisions except persons engaged in the businesses listed from the Sunday closing prohibition of N.D.C.C. § 12.1-30-01 and its corresponding criminal penalties. As in the case of N.D.C.C. § 5-02-01.1, N.D.C.C. § 12.1-30-04(37) provides no independent statutory basis for the authorization for the sale of alcoholic beverages on a Sunday. N.D.C.C. § 12.1-30-04(37) limits the sale of alcoholic beverages on a Sunday to those licensees that meet the requirements imposed by N.D.C.C. §§ 5-02-05, 5-02-05.1, and 5-02-05.2. No reference is made to N.D.C.C. 5-02-01.1. As I have discussed previously, an alcoholic beverage licensee may not dispense alcoholic beverages after 1:00 a.m. on a Sunday unless that licensee has obtained a permit in compliance with N.D.C.C. §§ 5-02-05.1 or 5-02-05.2. N.D.C.C. § 12.1-30-04(37) merely provides that if a licensee has a special alcoholic beverage permit issued pursuant to N.D.C.C. §§ 5-02-05.1 or 5-02-05.2, any sale of alcoholic beverages pursuant to those permits would not be a violation of the North Dakota Sunday closing law.

In summary, neither N.D.C.C. § 5-02-01.1 nor N.D.C.C. § 12.1-30-04(37) provides an additional basis for the issuance of a Sunday alcoholic beverage permit. A licensee who wants to engage in the dispensing or sale of alcoholic beverages on a Sunday must obtain a permit pursuant to N.D.C.C. §§ 5-02-05.1 or 5-02-05.2 and is subject to the restrictions and limitations of those sections. There may be instances, however, where a licensee may wish to dispense alcoholic beverages at a certain event which would necessitate the receiving of an N.D.C.C. § 5-02-01.1 permit. If the licensee wished to dispense alcoholic beverages at that event on a Sunday, the licensee would have to also obtain a permit issued pursuant to N.D.C.C. §§ 5-02-05.1 or 5-02-05.2.

I hope that I have adequately responded to your inquiries. Should you have further questions or comments concerning these matters, please feel free to contact me at your convenience.

Sincerely,

Nicholas J. Spaeth

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