

Date Issued: July 7, 1981 (AGO 81-70)

Requested by: Brian D. Neugebauer, City Attorney for the City of West Fargo

- QUESTION PRESENTED -

Whether the city of West Fargo has authority to license amusement games or devices.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the city of West Fargo does not possess authority to license amusement games or devices.

- ANALYSIS -

Chapter 53-04 of the North Dakota Century Code provides authority for the licensing of amusement games or devices. According to section 53-04-05, N.D.C.C., "The attorney general's licensing department shall administer and enforce the provisions of this chapter, and for that purpose the attorney general is directed and authorized to make, promulgate, and enforce such reasonable rules and regulations as he may deem necessary or expedient . . ."

A reading of this section and the regulations in this chapter clearly indicate that the Legislature intended the Attorney General to have sole and exclusive authority in the enforcement of chapter 53-04, N.D.C.C., regarding the licensing of amusement games or devices within this state. Nowhere in chapter 53-04, N.D.C.C., is there any provision whereby a city or county is able to exercise the authority given to the Attorney General.

Section 40-05-01(26), N.D.C.C., does allow a city to license, tax, regulate, remove, suppress, and prohibit, among other things, exhibitions, shows, and amusements. There is no language in this general statute contravening the specific authority given the Attorney General to license amusement games or devices in chapter 53-04, N.D.C.C. Indeed, the term "amusement games or devices," as that term is defined in section 53-04-01, N.D.C.C., does not appear in section 40-05-01(26), N.D.C.C.

A letter written on May 18, 1965, by a former special assistant attorney general implies that there is authority given to cities to license amusement games or devices. However, this opinion repudiates that implication and states the opinion of the Attorney General that no such authority exists given the current statutes of this state.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

ROBERT O. WEFALD
Attorney General

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