

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 2000-F-10

Date issued: March 14, 2000

Requested by: Kathi Gilmore, State Treasurer

- QUESTION PRESENTED -

Whether the exception in N.D.C.C. § 5-01-16 permitting limited importation of liquor or beer into North Dakota for personal use applies to an individual who places an order from within the state with an out-of-state supplier.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the exception in N.D.C.C. § 5-01-16 permitting limited importation of liquor or beer into North Dakota for personal use applies to an individual who places an order from within the state with an out-of-state supplier.

- ANALYSIS -

N.D.C.C. § 5-01-16 was enacted during the 1999 Legislative Session in order to regulate the direct sale of alcoholic beverages from sellers located out of state to North Dakota consumers, and provides:

1. No person in the business of selling alcoholic beverages may knowingly or intentionally ship, or cause to be shipped, any alcoholic beverage from an out-of-state location directly to a person in this state who is not a wholesaler.
2. No person in the business of transporting goods may knowingly or intentionally transport any alcoholic beverage, from an out-of-state location of a person in the business of selling alcoholic beverages, directly to a person in this state who is not a wholesaler.
3. For a first violation of subsection 1 or 2, the state treasurer shall notify, by certified mail, the violator and order that person to cease and desist any shipment of alcoholic beverages in

violation of subsection 1 or 2. The second violation of subsection 1 or 2 is a class A misdemeanor and a third and subsequent violation is a class C felony.

4. The alcoholic beverage transported in violation of this section and the vehicle used in violation of this section are forfeitable property under chapter 29-31.1.

This section does not apply to a transaction in which an individual twenty-one years of age or older who imports or transports into this state 2.38 gallons [9 liters] or less of liquor or two hundred eighty-eight fluid ounces [8517.18 milliliters] or less of beer per month for personal use and not for resale from a person as described under subsection 1 or 2. Every package of alcoholic beverages shipped directly to an individual in this state must be labeled with conspicuous words "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY". A shipper shall obtain the signature of an individual twenty-one years of age or older before delivering any alcoholic beverages shipped directly to an individual in this state.

N.D.C.C. § 5-01-16. At question is the interpretation of the exception which allows importation of liquor or beer for personal use.

Two particular acts are illegal under N.D.C.C. § 5-01-16. First, no person who sells alcoholic beverages may ship them, or cause them to be shipped, from an out-of-state location directly to a person in North Dakota other than a liquor wholesaler. Second, no one who transports goods may transport alcoholic beverages from an out-of-state location where they are sold to a person in this state other than a licensed wholesaler.

N.D.C.C. § 5-01-16 includes an exception which applies when liquor or beer is transported into this state in limited quantities for personal use and not for resale. Therefore, persons in the business of selling alcoholic beverages or transporting goods and who are shipping or causing to be shipped alcoholic beverages from an out-of-state location directly to a person in this state who is not a wholesaler may not be charged if the exception applies. The exception does not specify that the North Dakota consumer must be at any given location. This necessarily implies that the statute was intended to address the situation where a North Dakota resident, while in North Dakota, places an order for alcoholic beverages with an out-of-state retailer for shipment into North Dakota.

It is my understanding that an individual has suggested to you that the exception only applies when the consumer is not in North Dakota at the time of the purchase. This argument is based on a description of the purchaser as "an individual . . . who imports or transports into this state" alcoholic beverages, which arguably implies that the person must be out of state in order to import or transport the product into this state. However, words in a statute may not be read in isolation but must instead be read together in context with the entire statute of which they are a part. Johnson v. Workers Compensation Bureau, 481 N.W.2d 292, 295 (N.D. 1992). Statutes must be harmonized to avoid conflict between parts. Thompson v. N.D. Dept. of Agriculture, 482 N.W.2d 861, 863 (N.D. 1992). The exception is based on "a transaction." Only one part of the exception's description is that the individual is importing or transporting alcoholic beverages into the state for personal consumption. An essential part of the exception is that the transaction involved purchases "from a person as described under subsection 1 or 2." The persons described in subsections 1 or 2 are persons from out of state who are in the business of selling alcoholic beverages or in the business of transporting goods. These persons would necessarily be importing or transporting the purchased alcoholic beverages at the request of the purchaser. It is not relevant to the transaction whether the purchaser is in North Dakota or somewhere else when requesting that the seller or transporter ship the product. It is the fact that the alcoholic beverages are outside of North Dakota and are being brought into North Dakota which is relevant to this statute and its exception.

Therefore, it is my opinion that the exception in N.D.C.C. § 5-01-16 permitting limited importation of liquor or beer into North Dakota for personal use applies to an individual who places an order from within the state with an out-of-state supplier.

- EFFECT -

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

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