

N.D.A.G. Letter to Priebe (March 29, 1999)

March 29, 1999

Mr. Tim Priebe
Dickinson City Attorney
PO Box 1097
Dickinson, ND 58602-1097

Dear Mr. Priebe:

Thank you for your February 18, 1999, letter relating to teen functions in licensed liquor establishments. I have again had a chance to review the June 25, 1991, letter from Attorney General Nicholas J. Spaeth to Bismarck City Attorney Charles C. Whitman.

I have many of the same concerns that Attorney General Spaeth mentioned in his June 25, 1991, letter. However, as was evident in that letter, I, along with the previous Attorney General, must rely upon the local governing body and law enforcement officials to set forth the procedures and conditions of operation which would insure that no violation of the state alcoholic beverage laws would occur on the licensed premises.

When the June 25, 1991, letter was issued, the Bismarck alcoholic beverage establishment may not have been authorized under N.D.C.C. § 5-02-05.1 to obtain a Sunday alcoholic beverage permit. It was not until the 1993 Legislative Assembly that the language relating to "qualified beverage licensee" was added to section 5-02-05.1 which would then permit licensees other than private clubs, lodges, restaurants, motels, or hotels or a publicly owned or operated facility to dispense alcoholic beverages on a Sunday. Therefore, the Bismarck bar, although an alcoholic beverage licensee, may have been prohibited from engaging in any alcoholic beverage business on a Sunday in 1991, and may have had no authority from the City of Bismarck to engage in such business by virtue of a Sunday alcoholic beverage permit.

Your Dickinson establishment is in a somewhat different situation. The establishment could open for business and sell, display, and allow the consumption of alcoholic beverages on its premises on a Sunday by virtue of a Sunday permit issued by the City of Dickinson. There may have been assurance that would be no sale, display, or consumption of alcoholic beverage in the Bismarck establishment on a Sunday since such conduct may have been prohibited under law at that time. You do not have that same situation with the establishment in Dickinson. Regardless of the decision of the establishment to close, apparently the City of Dickinson Sunday alcoholic beverage permit would remain valid even when a teen dance was being conducted on the premises.

It is conceivable that the owners of the establishment could open for business at noon under the permit, sell, display, and allow consumption of alcoholic beverages on the

premises until 7 p.m., and then open the doors to persons under the age of 21 after the alcoholic beverages have been removed and are no longer displayed. In such a case, it is possible this manner of operation of the establishment may cause some enforcement issues to arise as well as issues of public perception. These are matters, however, which would have to be addressed by the Dickinson City Commission if it permitted such activity upon the premises which is otherwise licensed to engage in the retail sale of alcoholic beverages.

The basic law, however, is unchanged. N.D.C.C. § 5-02-06 prohibits any alcoholic beverage licensee to permit a person under the age of 21 years to remain on the licensed premises "while alcoholic beverages are being sold or displayed." The fact that the establishment may possess a Sunday alcoholic beverage permit does not change the basic discussion set forth in the June 25, 1991, letter to the Bismarck City Attorney. Although it may, for enforcement purposes, be appropriate for the city to not grant a permit on the Sundays when the teen functions will be held at the establishment, I do not believe that this is absolutely necessary, if, at the time that the function will be held, alcoholic beverages will not be sold or displayed and sufficient protections are set forth in the agreement with the establishment that there will be compliance with all North Dakota laws.

I am sure that, if this is permitted, the citizens of the City of Dickinson will have an opportunity to express their concerns. The establishment will have the greatest interest to protect its license and its future ability to receive a Sunday alcoholic beverage permit. Since the teen function would not be conducted under the auspices of the Sunday alcoholic beverage permit, this agreement with the establishment would be a primary benefit to the establishment in establishing the exact circumstances and conditions under which the teen functions will be conducted to insure that there is no confusion or misunderstanding by the establishment, the city, or the city enforcement authorities in the operation of these functions. This agreement may also lessen any concerns which may arise when this matter is considered by the governing body of the City of Dickinson.

Sincerely,

Heidi Heitkamp
Attorney General

rpb/vkk