

N.D.A.G. Letter to Holmberg (Aug. 21, 1987)

August 21, 1987

Honorable Ray Holmberg
State Senator
District 17 and 18
1701 Riverside Drive
Grand Forks, ND 58201

Dear Senator Holmberg:

Thank you for your letter of July 16, 1987, concerning Senate Bill No. 2380.

As codified as N.D.C.C. § 5-02-05.2, Senate Bill No. 2380 provides that "the local governing body may provide . . . the right of an eating establishment to dispense and sell beer and wine in conjunction with the sale of prepared meals on Sunday. . . ." The phrase "in conjunction with the sale of prepared meals" is ambiguous. It may mean that beer and wine may be sold on a Sunday only to those persons who are consuming a meal. On the other hand, the phrase may mean that beer and wine may be sold on a Sunday in those eating establishments which sell such beverages as part of the sale of prepared meals on a Sunday. Under the latter interpretation, beer and wine may be sold on a Sunday to a person who is not consuming a prepared meal as long as meals are being served to other patrons during the same time period.

Ordinarily, when a statute is plain and unambiguous its interpretation is limited to its words as they appear. Schmutzler v. Workmen's Compensation Bureau, 49 N.W.2d 649 (N.D. 1951). Where a statute is ambiguous, however, we must ascertain the statute's meaning by studying and giving effect to the Legislature's intent in enacting the statute. Salzseider v. Brunsdale, 94 N.W.2d 502 (N.D. 1959); Ophaug v. Hildre, 42 N.W.2d 438 (N.D. 1950). See also N.D.C.C. § 1-02-39(1), (3).

In reviewing the legislative history of Senate Bill No. 2380, although there is some ambiguity, it does appear that the principal goal of this statute was the sale of beer and wine on a Sunday only to those individuals consuming a prepared meal on the premises.

According to the summary of the testimony presented to the House and Senate Industry, Business, and Labor Committees, you testified as follows:

It does not allow for bars and lounges to be open. It does not allow for bottle shops to be open, it allows for the sale of beer and wine with prepared meals on Sunday. . . . Many people like to drink wine with their meals or beer.

Hearing on S. 2380 Before the House Committee on Industry, Business, and Labor, 50th Leg., (March 10, 1987) (emphasis supplied).

This is a totally different issue than the Sunday opening law. This would just allow restaurants to provide their customers with what they want with their meals.

Hearing on S. 2380 Before the Senate Committee on Industry, Business, and Labor, 50th Leg., (February 4, 1987) (emphasis supplied). A witness representing the North Dakota Hospitality Association also spoke about this bill.

Our guests tell us that this is what they want. Why can you have a glass of beer or wine with your meal on the other six days, but not on Sunday?

Id.

The director of the Fargo Convention and Visitors Bureau spoke in favor of the bill. According to the committee minutes, he stated that "[i]f we are to really be competitive to be able to have beer and wine with their meals on Sunday is one of the best things we can do for the tourism industry in ND." Id. (emphasis supplied). Another representative of the North Dakota Hospitality Association stated that "[t]hey think it a little funny they can lose money at blackjack the night before but the next day they can't have wine with their meal." Hearing on S. 2380 Before the House committee on Industry, Business, and Labor, 50th Leg., (March 10, 1987) (emphasis supplied).

Therefore, in reviewing the intent of the Legislature as expressed in the legislative history of this bill, it is my opinion beer and wine may be sold on Sunday only to those individuals consuming a prepared meal on the premises. A city ordinance would not be in compliance with N.D.C.C. § 5-02-05.2 if it allowed the purchase of beer and wine on Sunday without any requirement for the purchase of a prepared meal.

However, one final ambiguity remains. N.D.C.C. § 5-02-05.2 does not address what constitutes a "prepared meal." At the hearing which was considering Senate Bill No. 2380, before the Senate Industry, Business and Labor Committee, Senator Nething asked proponents of the bill what constitutes a prepared meal. Essentially, the Senator questioned whether a burger and fries would be sufficient. In response, the proponents stated that this bill would provide that beer and wine could be served with a prepared meal and that the definition of prepared meal was a factual question to be determined by the local licensing body. No further committee discussion was had concerning the issue of what constituted a prepared meal. Hearing on S. 2380 Before the Senate Committee on Industry, Business, and Labor, 50th Leg., (February 4, 1987).

Thus, it is clear that the Legislature did not wish to address the question of the scope of the phrase "prepared meals." Instead, it appears the Legislature deferred to the local licensing bodies the determination of this issue.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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