

**OPINION
74-63**

April 17, 1974 (OPINION)

The Honorable A. G. Bunker
State Representative
Legislative District 21
P. O. Box 2664
Fargo, ND 58102

Dear Representative Bunker:

On November 15, 1973, this office issued an opinion to you in which we concluded that we were not aware of any authority that would allow a city to levy a local excise tax, not to exceed fifty percent, on the gross sales of liquor sold by alcoholic beverage establishments in that city.

During a routine survey of currently licensed alcoholic beverage establishments in the State, it was observed that the city to which our previous opinion referred had only one licensed establishment for the sale of liquor, and that such establishment appears as a nonprofit corporation on the records of the Secretary of State.

This is a rather unique situation, and we have located a specific statute that is applicable in such a unique situation. This statute is found at Section 40-05-02.2 of the North Dakota Century Code, and provides as follows:

"40-05-02.2. CITY MAY LEVY EXCISE TAX ON NONPROFIT LIQUOR DEALERS BY ORDINANCE. Any city, through the enactment of an ordinance to such effect, may levy a local excise tax, not in excess of fifty percent, upon the proceeds from gross sales of liquor, as defined by subsection 3 of section 50-01-01, by any nonprofit corporation licensed by the city to sell such liquor; provided, however, that no city shall levy the tax herein provided for unless such nonprofit corporation is the only person, firm, association, or corporation within the corporate limits of such city licensed to sell such liquor.

2. The city in levying the excise tax provided for in subsection 1 shall provide within the levying enactment a method of computation, collection, and disposition of such tax revenue, and a procedure whereby any person aggrieved by such procedure may appeal to the governing body of the city. The right of appeal from a decision of the governing body of such city to the district court of the district wherein such city is located shall not be restricted."

Applying the above quoted section to the fact situation that we now have become aware of, it would be our conclusion that the particular city in question has the authority to levy the excise tax as contemplated. To that extent, our opinion of November 15, 1973, is modified.

Sincerely yours,

ALLEN I. OLSON

Attorney General