

**LETTER OPINION
2006-L-13**

April 12, 2006

Mr. Richard E. Herr
Wishek City Attorney
PO Box 825
Wishek, ND 58495-0825

Dear Mr. Herr:

Thank you for requesting my opinion on two issues relating to the state alcohol retail licensing laws. It is my opinion that N.D.C.C. § 5-02-03 limits the additional license fee Wishek can charge prospective licensees to sell alcohol on Sundays to five dollars for each Sunday the licensee proposes to sell alcoholic beverages. It is my further opinion that, upon proper application, a local governing body may issue a Sunday alcoholic beverage permit pursuant to N.D.C.C. § 5-02-05.1 for every Sunday in any given year.

ANALYSIS

Your first question is whether N.D.C.C. § 5-02-03 limits the license fee Wishek can charge holders of retail licenses to sell alcohol on Sundays. Section 5-02-03, N.D.C.C., addresses the amount a local entity can charge for a license to sell alcohol. That section specifically addresses the additional amount a local entity can charge for a license when the proposed licensee intends to sell alcohol on Sundays: "In addition to any other license fee permitted by this section, a license fee may be increased by not more than five dollars for each Sunday the licensee sells alcoholic beverages."¹ That sentence clearly limits the additional amount a local entity can charge for a license when the proposed licensee intends to sell alcohol on Sundays to five dollars per Sunday. Accordingly, it is my opinion that N.D.C.C. § 5-02-03 limits the additional license fee Wishek can charge prospective licensees to sell alcohol on Sundays to five dollars for each Sunday the licensee proposes to sell alcoholic beverages.

In addition to having a local license, a retail alcoholic beverage establishment must also obtain a local permit to sell alcohol on Sundays. The five dollar limit in N.D.C.C. § 5-02-03 applies to the local license and the fee for the local Sunday permit is governed by the second sentence of N.D.C.C. § 5-02-05.1(2). That sentence states, "[a] permit may be

¹ N.D.C.C. § 5-02-03.

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granted only upon proper application to and approval by the governing body, and must include payment of a fee determined by the governing body.² As you can see, that provision relates to the permit fee, not the license fee. As stated above, the license fee has a statutory maximum amount; the amount a local governing body may charge for a Sunday alcoholic beverage permit is not limited by statute.

Your second question is whether a local governing body could issue a Sunday alcoholic beverage permit covering every Sunday in a given year, rather than forcing a licensee to make a separate application for each Sunday. The last sentence of N.D.C.C. § 5-02-05.1(2) states, “[a] permit granted by the local governing body may be effective for more than one Sunday.” Accordingly, it is my opinion that, upon proper application, a local governing body may issue a Sunday alcoholic beverage permit pursuant to N.D.C.C. § 5-02-05.1 for every Sunday in any given year.

Sincerely,

Wayne Stenehjem
Attorney General

sam/vkk

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.³

² N.D.C.C. § 5-02-05.1(2) (emphasis added).

³ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).