

**LETTER OPINION  
2007-L-06**

February 15, 2007

Mr. Birch P. Burdick  
Cass County State's Attorney  
PO Box 2806  
Fargo, ND 58108-2806

Dear Mr. Burdick:

Thank you for your letter asking me whether a domestic winery needs a retail license from the Attorney General's office and a local license to sell wine produced at the winery, and whether a domestic winery is subject to local zoning regulations. It is my opinion that a domestic winery does not need a retail license from the Attorney General's office nor a local retail license to sell wine produced at the winery unless the domestic winery is providing alcoholic beverages to customers at a restaurant owned by the licensee and located on property contiguous to the winery. It is my further opinion that a domestic winery is subject to local zoning regulations.

ANALYSIS

I.

The State Tax Commissioner is authorized to issue a domestic winery license. That license allows the owner or operator of a North Dakota winery to produce wine and sell that wine for retail purposes on the winery premises.<sup>1</sup> A licensed domestic winery is specifically permitted to sell its wine at retail on-sale and off-sale; sell related products, cheeses or snacks; and to provide free samples.<sup>2</sup> It does not appear that any other license, state or local, is required for retailing wine produced by a domestic winery at the winery premises.<sup>3</sup>

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<sup>1</sup> N.D.C.C. § 5-01-17(2). A domestic winery is also permitted to sell wine to a North Dakota liquor wholesaler, and may sell or deliver its wine to persons outside the state if permitted by the laws governing the place of sale or delivery.

<sup>2</sup> N.D.C.C. § 5-01-17(2).

<sup>3</sup> Compare N.D.C.C. § 5-01-17(2) with the requirement for both state and local licensing for retail alcohol beverage sales in N.D.C.C. § 5-02-01.

However, “[a] domestic winery may obtain a domestic winery license and a retailer license allowing the on-premises sale of alcoholic beverages at a restaurant owned by the licensee and located on property contiguous to the winery.”<sup>4</sup> State laws governing retailers’ licenses require the licensee to have an appropriate license from the Attorney General and also a local license from the city, county, or the governing body of an Indian tribe.<sup>5</sup> Both of these requirements must be met because all provisions governing alcoholic beverages in Title 5 of the North Dakota Century Code apply to a domestic winery except as otherwise provided in the section providing for domestic wineries.<sup>6</sup> Further, there appears to be no intent to exempt a domestic winery that operates a restaurant<sup>7</sup> from state or local laws requiring restaurants to be licensed or inspected.<sup>8</sup>

Therefore, it is my opinion that a licensed domestic winery does not need a retail license from the Attorney General’s office or a local retail license in order to make a retail sale of wine produced at the winery, unless the domestic winery is operating a restaurant located on property contiguous to the winery.

II.

While this office has not previously addressed the question of whether a licensed domestic winery is subject to local zoning regulations, this office has determined that a retail alcoholic beverage license does not exempt alcoholic beverage retailers from applicable local zoning laws.<sup>9</sup> There is no basis to conclude that a domestic winery license would be any different in this regard than a retail alcoholic beverage license. Therefore, it is my further opinion that a licensed domestic winery must comply with all other applicable laws, including local zoning regulations that are applicable to the property.

Sincerely,

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<sup>4</sup> N.D.C.C. § 5-01-17(2).

<sup>5</sup> N.D.C.C. § 5-02-01.

<sup>6</sup> N.D.C.C. § 5-01-17(5).

<sup>7</sup> A retail liquor licensee must comply with all other state laws or local ordinances, including restaurant licensing. N.D.A.G. 81-93.

<sup>8</sup> See generally, N.D.C.C. ch. 23-09 for state laws concerning restaurant licensing.

<sup>9</sup> N.D.A.G. 86-9 (a county beer or liquor licensee is subject to township zoning), N.D.A.G. 81-93 (a city alcoholic beverage licensee must comply with all other state laws and local ordinances, including those relating to minors on the premises, zoning, and restaurant licensing), N.D.A.G. 97-F-10 (retail liquor licensee outside the corporate limits of a city must have a county liquor license but is subject to the city’s extraterritorial zoning jurisdiction).

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Wayne Stenehjem  
Attorney General

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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.<sup>10</sup>

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<sup>10</sup> See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).