

**OPINION
78-131**

January 27, 1978 (OPINION)

Mr. Robert A. Keogh
New England City Attorney
Box 1202
Dickinson, ND 58601

Dear Mr. Keogh:

This is in response to your letter to this office dated January 6, 1978, requesting our opinion as to whether under state law it " . . . is permissible for the City to employ either full-time or part-time policemen who are under the age of 21 years."

A search of state statutes discloses no law mandating a minimum age at which a policeman may be employed by a city in such a capacity. While there is no specific law dealing with this subject, other statutes have a relation to this issue.

For example, Section 5-01-08, N.D.C.C., states when certain persons under twenty-one years of age may enter premises where alcoholic beverages are sold or displayed, and is quoted as follows:

5-01-08. PERSONS UNDER TWENTY-ONE YEARS OF AGE PROHIBITED FROM ENTERING LICENSED PREMISES - PENALTY - EXCEPTIONS. Except as permitted in this section and section 5-02-06, any person under twenty-one years of age purchasing, attempting to purchase, or being in possession of alcoholic beverages, or furnishing money to any person for such purchase, or entering any licensed premises where alcoholic beverages are being sold or displayed, except a restaurant when accompanied by a parent or legal guardian, or in accordance with section 5-02-06, or if the person is a law enforcement officer entering the premises in the performance of official duty, is guilty of a class B misdemeanor. (Emphasis added)

Section 5-02-06 of the North Dakota Century Code specifies when persons under 21 years of age may enter premises licensed to sell alcoholic beverages. That statute is quoted herewith as follows:

5-02-06. PROHIBITIONS AS TO PERSONS UNDER TWENTY-ONE YEARS OF AGE - PENALTY - EXCEPTIONS. Except as permitted in this section, any licensee who dispenses alcoholic beverages to a person under twenty-one years of age, or who permits such a person to remain on the licensed premises while alcoholic beverages are being sold or displayed, is guilty of a class A misdemeanor, subject to the provisions of section 5-01-08, 5-01-08.1, and 5-01-08.2. Any persons under twenty-one years of age may remain in a restaurant where alcoholic beverages are being sold if the restaurant is separated from the roof in which alcoholic beverages are opened or mixed, if gross sales of food are at least equal to gross sales of alcoholic beverages which are consumed in the dining area, and if (1)

accompanied by a parent or legal guardian, (2) employed by the restaurant as a food waiter, food waitress, busboy, or busgirl under the direct supervision of a person twenty-one or more years of age, and not engaged in the sale, dispensing, delivery, or consumption of alcoholic beverages, on (3) if the person is a law enforcement officer entering the premises in the performance of official duty. any establishment where alcoholic beverages are sold may employ persons from eighteen to twenty-one years of age to work in the capacity of musicians under the direct supervision of a person over twenty-one years of age. (Emphasis added)

In addition, The North Dakota Combined Law Enforcement Council, in accordance with Section 12-61-03(7), N.D.C.C., has promulgated recommended selection standards for the hiring of police officers in the state of North Dakota. Reference to that portion of the Council's police officers' standards entitled: "Recommended Minimum Standards For Employment," discloses the following:

Every officer employed by a department should be at least 18 years of age if employed full time. (Full time shall be 30 hours or more per week.)

Accordingly, it is the opinion of this office that it is permissible for a city to employ either full-time or part-time policemen who are under the age of twenty-one years. While state law does not prohibit the hiring of a policeman who is under eighteen years of age, we believe that the Law Enforcement Council's promulgated standards, as cited above, should be followed and we advise against any city employing a full-time or part-time policeman who is under eighteen years of age.

Sincerely,

ALLEN I. OLSON

Attorney General