

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 89-1

Date issued: January 17, 1989

Requested by: Representative Francis J. Wald

- QUESTION PRESENTED -

Whether state law prohibits the serving of alcoholic beverages on state college or university property.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that state law does not prohibit the serving of alcoholic beverages on state college or university property. However, this activity can be prohibited or regulated by the State Board of Higher Education and the colleges and universities under its control.

- ANALYSIS -

There is no statute which specifically prohibits serving alcoholic beverages on state college or university property. However, N. D. C. C. ' 48-05-06 may be interpreted to address this issue. That statute states as follows:

48-05-06. Alcoholic beverages and drugs in charitable institutions prohibited.--Every person who shall take, send, or introduce any alcoholic beverage or controlled substance into any of the buildings or upon any of the premises of any charitable institution of this state, or of any county, or city thereof, except upon the express authority of the physician or chief executive officer of such institution, given in writing, is guilty of a class A misdemeanor. As used in this section, "controlled substance" shall be as defined in subsection 4 of section 19-03.1-01, and shall include counterfeit substances as defined in subsection 5 of section 19-03.1-01.

(Emphasis supplied.) This statute does prohibit alcoholic beverages on property of state "charitable institution(s)". However, the term "charitable institution" is not defined. To resolve the ambiguity surrounding the term "charitable institution," it is appropriate to consider legislative history so as to fulfill the objective and intent of the Legislature. Fargo Ed. Ass'n v. Fargo Public School Dist. No. 1, 291 N. W. 2d 267 (N. D. 1980); N. D. C. C. ' 1-02-39(3).

N. D. C. C. ' 48-05-06 was first enacted in 1911, 1911 N. D. Sess. Laws 229, ' 1,

and provided as follows:

' 1. Every person who shall take, send or introduce any intoxicating liquor, narcotic, or other habit-forming drug of any kind into any of the buildings or upon any of the premises of the state hospital for the insane, school for deaf and dumb, school for the blind, reform school, state penitentiary, or other penal or charitable institutions of the state, except upon the express authority of the physician or chief executive officer of such institution, given in writing, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not exceeding one hundred dollars, or imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment.

This section specifically listed a number of the state "charitable institutions". Section 3 of the Act provided that the Act was to be an emergency measure since there "is no present law to prevent the introduction of intoxicating liquors and narcotics into such institutions. . . ." (Emphasis supplied.) In 1913, the law was amended, in part, to include the "Feeble Minded Institute" (now Grafton State School). 1913 N.D. Sess. Laws 224, ' 1.

When the law was codified in the Revised Code of 1943 as ' 48-0506 it stated as follows:

Every person who shall take, send, or introduce any intoxicating liquor, narcotic, or other habit-forming drug of any kind into any of the buildings or upon any of the premises of any penal or charitable institution of this state, or of any county, city, or village thereof, except upon the express authority of the physician or chief executive officer of such institution, given in writing, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.

While this revision eliminated the named institutions, it was not intended to make any change in the law. The code revisor notes state that the section was "revised in form for clarity without change in meaning." See Code Revision Report, Twenty-eighth Session of the Legislative Assembly. Thus, the changes in the wording of this statute occurred not by legislative action, but by action of the Code Revisor.

In interpreting the correct legislative intent surrounding the enactment of N. D. C. C. ' 48-05-06, the provisions of N. D. C. C. ' 1-02-25 are applicable. That statute states as follows:

1-02-25. Continuations of existing statutes. For purposes of historical reference and as an aid to interpretation,

the provisions of this code, so far as they are substantially the same as previously existing statutes, must be construed as continuations thereof, and not as new enactments except that a revised version of such statutes contained in this code supersedes all previous statutes.

See also Section 1-0225, N. D. R. C. 1943.

In City of Fargo v. Annexation Review Commission, 148 N. W. 2d 338 (N. D. 1966), the North Dakota Supreme Court considered the a 1915 statute that had been rewritten by the code revisor in 1943. The 1943 revision, which was not the result of any legislative action, resulted in a potential substantive change in the statute's provisions. The court found that the Legislature had not intended to change the 1915 statute when it adopted the Revised Code of 1943 and, subsequently, when it adopted the same statute within the North Dakota Century Code. The court wrote:

Since the original enactment is unambiguous as to its intent and meaning, the subdivisions and changes appearing in the North Dakota Revised Code of 1943, and subsequently appearing in the North Dakota Century Code, do not change the original intent and meaning as embodied in the original enactment of the 1915 statute.

148 N. W. 2d at 348. The court decided that, thus, the current statute had to be construed as a continuation of the previously existing statute, and the court applied the statute as it had appeared in 1915. Id.

Applying the provisions of N. D. C. C. ' 1-02-25 and the rule of law announced in City of Fargo v. Annexation Review Commission, it is my opinion that N. D. C. C. ' 48-05-06 pertains only to specified types of charitable institutions as listed in the 1911 legislative enactment. As such, N. D. C. C. ' 48-05-06 does not apply to public colleges and universities. The action of the 1943 Code Revisor cannot take the place of legislative action with respect to the addition of those public institutions to which the Legislature intended the statute to apply.

The North Dakota State Board of Higher Education can, however, regulate the use of alcoholic beverages on property under its control. N. D. C. C. " 15-10-17(2), (5) specifically authorize the Board to supervise, control and manage institutional property. The Board currently has only one specific rule in this area, Policy 501, which prohibits liquor in dormitories. There does not appear to be a general prohibition on alcohol on the State campuses. It is my understanding that alcohol is allowed on campuses in certain situations with administrative approval.

The request to serve alcohol on the grounds of Dickinson State University is therefore a matter properly pursued between the University administration and the Board of Higher Education.

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- EFFECT -

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.

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