

OPINION
46-61

January 30, 1946 (OPINION)

CITY ORDINANCES

RE: Regulating Liquor Sales

This will acknowledge your letter of January 24, 1946, in response to my letter of January 22.

I think it would be a very good idea if the "model liquor ordinance," adopted by many cities of the state of North Dakota, was to provide for a suspension of the local liquor license as well as its revocation. I will contact Mr. Atkinson, the secretary of the League of Municipalities, to see if he deems it feasible to get the cities to amend their ordinances to provide for suspension of a local liquor license. Chapter 50 of the 1945 session laws, sometimes known as senate bill 109, provides for suspension or revocation in the discretion of the attorney general, and I believe it would be well if the city ordinances provided for the same remedies. I think it would also have a wholesome effect in handling minor offenses of a liquor dealer. In many cases the local authorities feel that revocation is too severe a penalty and therefore hesitate to take the necessary steps to revoke the license. They might feel differently if it were in their discretion to suspend the license for a few days or any period which they would think just and proper.

Your letter raises the question of whether a liquor dealer could be convicted of the sale of intoxicating liquor to a minor on the testimony of the minor alone. You suggest that the minor is an accomplice in the commission of the crime, and that therefore, it is doubtful whether a conviction could be procured on the uncorroborated testimony of the minor.

I have given this matter some thought. Section 5(1) of chapter 50 of the 1945 Session Laws declares that no holder of a license authorizing the sale at retail of beer, alcohol, or alcoholic beverages, or any servant, agent, or employee of the licensee, shall sell alcohol, alcoholic beverages to a minor or an incompetent person. Chapter 52 of the 1945 Session Laws repeals sections 5-0210 and 5-0318 of the North Dakota Revised Code, and provides that no person shall sell or deliver any beer, alcohol, or alcoholic beverages to a person under the age of twenty-one years, ---.

Nowhere have I found any statute, nor do I know of any statute, which makes the purchase of beer, alcohol, or alcoholic beverages by a minor a crime. The statutes indicate that it is a crime to sell beer, alcohol, or alcoholic beverages to a minor, but apparently the purchase of beer, alcohol, or alcoholic beverages by a minor is not a crime. Such purchase might subject the minor to the jurisdiction of the juvenile court on the ground of delinquency, but as far as I can ascertain under the statutes, the purchase is not a crime.

An "accomplice" is an associate in guilt in the commission of a crime, a participant in the offense as a principal or accessory.

Many definitions of an "accomplice" can be found. However, all of them seem to convey the idea that an accomplice is one who participates in a crime. Undoubtedly the theory of the common law which brought about the rule that a conviction should not be had upon the testimony of an accomplice unless corroborated by some other evidence as tends to connect the person with the offense was grounded on the theory that an accomplice might perjure himself in order to avoid punishment, or to get some consideration resulting in the imposition of a lesser punishment upon him than the party against whom he testified. Section 29-2114 of the North Dakota Revised Code adopts the common law rule of evidence in this regard. However, it appears to me that since the statutes of our state indicate that the minor who purchases beer, alcohol, or alcoholic beverages is not guilty of a crime, such minor is not an accomplice in the sense contemplated by our statutes, in that he is not himself guilty under our law of any crime, and hence, is not a participant in the crime, the crime consisting solely of the sale or delivery to the minor of beer, alcohol, or alcoholic beverages.

It is, therefore, my thought that a liquor dealer may be convicted for the sale of beer, alcohol, or alcoholic beverages upon the uncorroborated testimony of a person under the age of twenty-one who buys the same from such dealer. The lack of corroboration of the sale merely would go to the weight of the evidence and not to its admissibility as a basis for conviction, and since a person under twenty-one years of age is not an accomplice in a crime, when such person purchases or procures the delivery of beer, alcohol, or alcoholic beverages, the rule pronounced in section 29-2114 of the North Dakota Revised Code is not applicable.

Apparently it has been the theory of the law that a minor should not be declared a criminal by the purchase of beer, alcohol, or alcoholic beverages. The only criminality involved is in the sale to him of such beverage or beverages, and is made such by statute, and makes it incumbent upon the liquor dealer to refrain from such sale or delivery and for which he alone can be punished, if the law is violated.

NELS G. JOHNSON

Attorney General