

Official Opinion No. 81-43, Extraterritorial Jurisdiction of Municipalities on Alcoholic Beverage Matters

November 9, 1981

Mr. Kenneth W. Cotton
Assistant City Attorney
Wagner, South Dakota 57380

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Extraterritorial Jurisdiction of Municipalities on Alcoholic Beverage Matters

Dear Mr. Cotton:

You have requested an official opinion in regard to the following factual situation:

FACTS:

Two individuals have applied to the Charles Mix County Commission for low point beer licenses. Each of these individuals operates businesses barely outside the Wagner city limits. Wagner has adopted an ordinance imposing a ban on Sunday sale of low point beer.

Based on the above facts you have asked the following question:

QUESTION:

Does the extension of police power jurisdiction provided by SDCL 35-3-1 allow a municipality to prohibit Sunday sale of low point beer within the one mile extension zone?

The answer to your question is 'yes.' The City of Wagner may by ordinance regulate transactions with respect to alcoholic beverages within one mile of the territorial limits of the municipality.

SDCL 35-3-1 states as follows:

Any incorporated municipality shall have power to provide by ordinance for police supervision and enforcement of the provisions of this title as to any licensees who operate within one mile of the territorial limits of such municipality.

While it is a general rule that municipalities have no extraterritorial powers without specific legislative authority, municipal corporations in South Dakota have certain specific statutory authority. For example, SDCL 9-21 provides for a general authority of a municipality to exercise jurisdiction for all authorized purposes over all territory outside the corporate limits for the purpose of promoting the health, safety, morals and general welfare of the community and of enforcing its ordinances and resolutions relating thereto. This was recently interpreted by the South Dakota Supreme Court in permitting a municipal police officer to make an arrest for DWI within the one mile extension area. *State v. Hirsch*, --- N.W.2d --- (Decided September 2, 1981).

Likewise our Supreme Court has already determined that municipalities may prohibit the sale of low point beer on Sunday pursuant to SDCL 9-29-7 notwithstanding SDCL 35-6-30 which prohibits the sale of low point beer only between certain hours. The Court in the case of *Snowland, Inc. v. City of Brookings*, 282 N.W.2d 607 (1979) held that the city was authorized to prohibit the sale of low point beer on Sundays, that the ordinance enacted was not in conflict with state law, and that reasonable grounds existed for the city to exercise its police power by regulating the sale of low point beer on Sundays.

The same alcoholic beverage statute was interpreted by my predecessor in 1951-52 A.G.R. 230 stating that this statute 'is sufficiently broad to permit the municipality to prohibit the sale of alcoholic beverages on Sunday within one mile of the corporate limits of the city of Lake Andes, irrespective of who issues the particular license in question.' Although considerable time has passed since the rendition of that opinion, I find that the appropriate sections of the alcoholic beverage statutes have not changed. It continues to be my opinion that to give section 35-3-1 any effect it must be interpreted to give the municipality the authority to prohibit Sunday sales of low point beer within the area over which it is authorized to exercise control, i.e. the municipality itself and contiguous one mile area.

Respectfully submitted,

Mark V. Meierhenry
Attorney General