

**N.D.A.G. Letter to Slorby (June 26, 1990)**

June 26, 1990

Mr. Tom P. Slorby  
Ward County State's Attorney  
Ward County Courthouse  
Minot, ND 58701

RE: Designated Driver Awards

Dear Tom:

Thank you for your June 18, 1990, letter in which you have inquired as to whether the designated driver awards proposed for implementation in liquor establishments may violate the gambling laws of North Dakota.

N.D.C.C. § 12.1-28-01 sets for the definition of "gambling". The essence of this definition is that gambling requires consideration, chance, and prize. If all three elements are not present in a transaction, no gambling prohibited by laws of this state has occurred. If the participants in the designated driver award program have not provided consideration for the chance to win a prize, then no gambling has occurred. In other words, if the participant does not have to "pay to play" but the program is available to all persons at no cost, the consideration element is not present and no gambling occurs.

Many other promotional activities involve chances to win prizes but no consideration is required to participate in those programs. Prizes may be given to persons who are wearing seat belts at a certain location, radio promotions may award prizes to a certain caller, or grocery stores may award shopping prizes to all persons who enter the contest. In each of these cases, the participants are not required to "pay to play" and no illegal gambling has occurred.

If the participants in the designated driver award program must pay consideration for the chance to win an award, gambling may have occurred. Therefore, it is necessary that the persons attempting to structure this award program insure that persons who have a chance to win the award are not required to pay consideration for that chance.

We have avoided attempting to give a stamp of approval to any proposed promotional programs since the details of that program may change from the receipt of the initial letter to the date of the initiation of the program. It will be the responsibility of the persons conducting the program to make sure that the program when finally structured and initiated complies with the laws of the state.

I hope that I have adequately responded to your inquiry.

Sincerely,

Nicholas J. Spaeth

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