

**OPINION
70-32**

July 27, 1970(OPINION)

Mr. Idean M. Locken
City Attorney
Lakota, ND

RE: Cities - Alcoholic Beverage License - Service on City Council

This is in reply to your letter of July 7, 1970, wherein you state that due to certain circumstances which have presented themselves in your city, you request a reviewal of previous opinions issued several years ago by this office which in effect held that a person holding an alcoholic beverage license from the city cannot serve on the city council. You also request that such reviewal includes the question of whether a person holding an alcoholic beverage license issued by the city can hold the position of mayor of the city.

We note that your city is a council city. Thus, the city council is composed of a mayor and at least four aldermen. Section 40-08-05 of the North Dakota Century Code sets forth the qualifications for aldermen. This section reads as follows:

"QUALIFICATIONS OF ALDERMEN. No person shall be eligible to the office of alderman if he:

1. Is not a qualified elector of and resident within the ward for which he was elected, except that in cities where aldermen are elected at large, he shall be a qualified elector of and a resident within the city; or
2. Has been convicted of malfeasance, bribery, or other corrupt practice or crime."

Section 40-08-14 sets forth the qualifications for the mayor. This section reads as follows:

"MAYOR - QUALIFICATIONS - TERM. The chief executive officer of the city is the mayor. He shall be a qualified elector within the city and shall hold his office for four years and until his successor is elected and qualified."

Section 40-08-09 enumerates restrictions which apply to the members of the city council, and thus apply to both the mayor and aldermen.

This section provides the following:

"RESTRICTIONS ON MEMBERS OF COUNCIL. No member of the city council shall:

1. Be eligible to any other office the salary of which is payable out of the city treasury;
2. Hold any other office under the city government; or
3. Hold a position of remuneration in the employment of the city."

The above three sections of the North Dakota Century Code set forth the qualifications and restrictions of the members of the city council. An additional limitation affecting council members in cities of under ten thousand inhabitants is found at section 40-13-06, wherein it is stated that members of the governing body of any municipality are prohibited from becoming a party to, or in any manner interested in any contract work or

letting under the authority of the municipality. However, this section would not appear to apply to licensing requirements of the city by which a council member might be regulated.

An examination of the statutory qualifications and restrictions applicable to members of a city council fails to reveal any prohibition against a holder of a city alcoholic beverage license from serving on a city council, whether such person be mayor or alderman. However, the members of a city council occupy a position of public trust, and from which position they are obligated to refrain from obtaining personal and private gain. Therefore, in order to avoid the appearance of impropriety, a member of a city council should refrain from voting upon matters involving himself wherein the city confers a privilege upon such person, such as in the granting of a license.

It is therefore our opinion that a member of a city council is not prohibited from serving on such council by the fact that he holds an alcoholic beverage license issued by the city. However, it is our further opinion that such person must refrain from passing on his own license application or on other matters which directly affect his license-holding privilege wherein a possible conflict of interests would at least give his voting on such matter the appearance of impropriety. Any previous opinions of this office with regard to this subject which hold to the contrary are hereby overruled.

HELGI JOHANNESON
Attorney General