

OPINION
71-4

May 12, 1971 (OPINION)

Mrs. Bernice Asbridge
State Treasurer

RE: Alcoholic Beverages - Sale at Wholesale - When Effective

This is in reply to your letter of April 29, 1971, wherein you request an opinion interpreting section 5-03-01, North Dakota Century Code with regard to the following questions:

1. Is a 'sale' at the time payment is received?
- "2. Is a 'sale' at the time of delivery and payment is received?

"Does the language - 'allow sale to licensed retailers,' imply that the 'sale' is completed when the merchandise is delivered to the premises of the licensed retailer?"

Generally, a "sale" contains two essential elements. These are: (1) a contract for sale, involving an offer and acceptance, and (2) delivery to the purchaser. Although it might be argued that delivery is complete upon delivery of a document evidencing title to the item purchased, rather than delivery of the item itself, we must also consider the fact that this term is here used in the context of regulatory laws relating to alcoholic beverages. One of the purposes of these regulatory laws is to insure that, for example, alcoholic beverages are not sold or delivered to persons under the age of twenty-one years. Although perhaps not couched in express terms, it is implicit that sales of alcoholic beverages by retail licensees must take place on licensed premises; and this includes physical delivery of any and all alcoholic beverages sold. This is so because of the interest of the state in insuring that alcoholic beverages not be "disposed" to persons under the age of twenty-one years.

If a retail licensee is to "deliver" alcoholic beverages to the purchaser on the licensed premises by transferring actual physical possession of such alcoholic beverages, then it follows that he must first have such beverages in his physical possession at the time of such transfer. In order for this to be accomplished, it is necessary for a wholesaler to physically deliver the alcoholic beverages to the retailer in the first instance.

It is, therefore, our opinion that section 5-03-01, North Dakota Century Code in using the term "sale" by a wholesaler to a licensed retailer only, requires that delivery of the alcoholic beverages be made to the premises of the licensed retailer, since subsequent sales at retail of such beverages must be made, and physical delivery of such beverages must occur, on the licensed premises of the retailer.

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Attorney General