

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

AGENDA ITEM: 10 – I

DATE: June 28-30, 2016

SUBJECT: BOR Policy 6:14 – Sale of Alcoholic Beverages at Institutions (2nd Reading)

At the May meeting, the Board of Regents considered the first reading of new BOR Policy 6:14 and approved it unanimously with an amendment proposed by Guilherme Costa prior to voting. That amendment was the result of a conversation Guilherme had with one of the approved vendors and its legal counsel about the insurance that vendors obtain prior to serving alcohol at events. The amendment added a new subsection 3.B.9.d. that provides as follows:

For purposes of this section 3.B.9., when the Vendor has its own insurance coverage including liquor legal liability in the amounts and coverage limits sufficient to meet the needs of the institution, the Permit holder’s insurance coverage will not need to (i) include liquor legal liability; or (ii) list the Vendor as additional insured.

Since the May meeting, both SDSU and NSU have expressed concern about the advertising prohibition contained in section 3.11 of the new policy, which language is below:

Alcoholic Beverage making or distributing companies shall not be allowed to advertise goods or services on Institutional Facilities, unless otherwise expressly permitted by Board action or another Board policy.

NSU and SDSU have each submitted a letter describing their concern and requesting that the Board delete section 3.11 from new BOR Policy 6:14. The two letters are provided as Attachment II and III. If the Board agrees to delete section 3.11, the Draft Motion should read as follows:

I move approval of the second and final reading of BOR Policy 6:14 as provided in Attachment I but as amended to delete the language contained in section 3.11 and renumber section 3.12.

(Continued)

Draft Motion 20160628_10-I: I move approval of the second and final reading of BOR Policy 6:14 as provided in Attachment I.

The remaining details contained in this item were previously presented in the item for the May Board meeting:

At the January 29, 2016 special meeting of the Board, the Board unanimously authorized the Executive Director to support Senate Bill 102. Senate Bill 102, which was passed by the Legislature and signed into law by the Governor, amended South Dakota Codified Law 35-2-6.1 to allow the issuance of alcoholic beverage licenses and special events licenses for sale on the campus of state educational institutions. The law is permissive and requires that the Board authorize the events and the times and places for such licenses.

As a result of this change to state law, a Board policy is needed to specify the terms and conditions of any approved sale of beer and wine at the institutions. The draft policy was vetted through the Council of Presidents and Superintendents and is being vetted through the Alcohol Task Force, the Business Affairs Council, and the Student Affairs Council.

Below are summaries of some key provisions of the draft policy included as Attachment I:

- The policy allows, but does not require, the institutions to permit the sale of beer and wine at certain events.
- Any institution that decides to allow the sale of beer and wine at certain events must develop a policy providing for an institutional Permit process.
- Institutions may develop and apply more restrictive terms and conditions for the issuance of a Permit.
- Institutions must submit to the Executive Director by August 1 of each year a report containing the following about all Permitted Events: (1) date, (2) brief description, (3) Permit holder, (4) Vendor, (5) Institutional Facility used, and (6) descriptions of any alcohol-related incidents.
- Permitted Events must be held for specified time periods in restricted spaces where access is controlled.
- For student athletic events, beer and wine may only be sold in specially designated box seat or loge areas.
- Separate events that occur in conjunction with student athletic events are allowed under additional conditions.
- Insurance and indemnification are required.
- Beer and wine-making or distributing companies may not advertise goods or services on Institutional Facilities.

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Sale of Alcoholic Beverages at Institutions

NUMBER: 6 : 1 4

1. Background

- A. South Dakota Codified Law (“SDCL”) 35-2-6.1 prohibits the issuance of a license to sell alcoholic beverages on the campus of any state educational institution. However, SDCL 35-2-6.1 contains two exceptions to this blanket prohibition.
1. The first exception allows the issuance of an alcoholic beverage license to engage in the periodic retail sale of malt beverages or wine for consumption on-site at a location and time, authorized by the Board of Regents, that involves the performing arts, intercollegiate athletics, fund raising, a reception, a conference, or an occasional or scheduled event at a facility used for performing arts, intercollegiate athletics, events, or receptions.
 2. The second exception allows the issuance of a special events license for a special event authorized by the Board of Regents that involves the performing arts, intercollegiate athletics, fund raising, a reception, a conference, or an occasional or scheduled event.
- B. The two exceptions to the blanket prohibition requires authorization by the Board of Regents. Therefore, the authority to use an alcoholic beverage license or a special events license at an event occurring on any property owned, leased, or operated by the Board of Regents, or on the campus of any state educational institution governed by the Board of Regents, is contingent on compliance with all Board policies, including this policy, and is limited by the terms and conditions contained in this policy.
- C. This policy allows, but does not require, the sale of beer and wine at certain events and locations as specifically authorized by, and under the express terms of, this policy.

2. Definitions

- A. For purposes of this policy, the term “Alcoholic Beverages” means beer and wine.
- B. For purposes of this policy, the term “Institutional Facilities” means any property owned, leased, or operated by the Board of Regents, or on the campus of any state

educational institution governed by the Board of Regents.

- C. For purposes of this policy, the term “Permit” means an authorization from the chief executive officer of the institution to procure an alcoholic beverage license or a special events license.
- D. For purposes of this policy, the term “Permitted Event” means a specifically designated event, a series of specifically designated periodic events, and special events.
- E. For purposes of this policy, the term “Vendor” means the contracted entity authorized by the institution to procure and obtain an alcoholic beverage license or a special events license that will supply and sell the Alcoholic Beverages at a Permitted Event.

3. Conditions for the Sale of Alcoholic Beverages at Institutions

- A. The Board of Regents expressly authorizes the chief executive officer of each institution to determine whether to grant a Permit to procure an alcoholic beverage license or a special events license. The grant of any such Permit shall be determined by the chief executive officer of the institution in accordance with the provisions set forth in this policy and not as a matter of right to any other person or party. In doing so, the chief executive officer of the institution must ensure that the decision to allow the sale of alcoholic beverages is consistent with this policy, applicable law, and the proper image and mission of the institution. Permits shall be conditioned upon the issuance of the appropriate license to sell alcohol by the local authority as required by South Dakota law.
- B. The delegation of authority to the chief executive officer of the institution to issue Permits to procure an alcoholic beverage license or a special events license are subject to the following terms and conditions:
 - 1. A Permit may be granted only for a Permitted Event. Each Permitted Event shall be defined by (1) the activity planned, (2) the area or location in which the activity will take place, and (3) the period of time during which the activity will take place.
 - a. The area or location in which the activity will take place must be defined with particularity and must encompass a restricted space or area suitable for properly controlling the sale, possession, and consumption of Alcoholic Beverages.
 - b. The time period for the activity must be a single contiguous time period for a separate defined occurrence (e.g., a dinner, a conference, a reception, a concert, a sporting competition within the donor areas, etc.). A series of events may only be permitted in conformity with the state and local licensing regulations. An event that lacks a pre-determined end time shall not be a Permitted Event.

- c. The area or location of the Permitted Event, the restricted space or area therein for sale, possession, and consumption of Alcoholic Beverages, and the applicable time periods for the Permitted Event must each be set forth in the Permit and in the application for a Permit.
 - d. The application for a Permit must require the submission of a plan that addresses security.
 2. Except as otherwise allowed by paragraph 3.B.3 below, any Permit issued for student athletic events (including without limitation NCAA, NIT, NAIA and intramural student athletic events) occurring on Institutional Facilities is limited to specially designated box seat or loge areas to which access is controlled and limited to such patrons, and may not include the sale of alcoholic beverages in any other areas (including without limitation general admission areas).
 3. A separate Permit may be issued for a Permitted Event that occurs in conjunction with student athletic events under the following terms and conditions:
 - a. The area must be for the Permit holder to entertain guests for home sporting events. Attendance is limited to adult patrons and guests who have received a personal written invitation and must not be open to access by the general public.
 - b. The Permitted Event must be conducted during pre-game only, last no more than three-hours, and end no later than at beginning of the sporting event.
 - c. The Permitted Event must be conducted in a secured area surrounded by a fence or other method to control access to and from the area. There must be no more than two (2) entry points manned by security personnel where identification is checked to verify age and special colored wrist bands are issued. A color-coded wrist band system must identify attendees and invited guests, as well as those of drinking age. No one under the legal drinking age shall be admitted into the alcohol service and consumption area of a Permitted Event. The area shall be clearly marked and shall be separated in a fashion that entry into the area and exit from the area can be controlled to ensure that only those authorized to enter the area do so and that no Alcoholic Beverages leave the area.
 - d. For pre-game Permitted Events held in specially designated box seat or loge areas, adult patrons and guests may be accompanied by youth for whom they are responsible, but only if such youth are, at all times, under the supervision and control of such adult patrons. Only patrons

who hold tickets to seats in those areas shall be allowed into the area during games.

4. A Permitted Event must be one requiring paid admission through purchase of a ticket or through payment of a registration fee, or one where admission is by written, personal invitation. Events generally open to participation by the public without admission charges or without written personal invitation shall not be eligible for a Permit. Only persons who have purchased a ticket or paid a registration fee for attendance at a Permitted Event, or who have received a written invitation to a Permitted Event, and who are of lawful age to consume alcoholic beverages, will be authorized to possess and consume alcoholic beverages at the Permitted Event.
5. The serving of Alcoholic Beverages must be part of a planned food and beverage program for the Permitted Event, rather than a program serving Alcoholic Beverages only. Food must be available at the Permitted Event, and consumption of Alcoholic Beverages and food cannot be the sole purpose of a Permitted Event. Non-alcoholic beverages must be as readily available as Alcoholic Beverages at the Permitted Event.
6. In no event shall the general public or any participants of a Permitted Event be allowed to bring Alcoholic Beverages into the Permitted Event or leave the defined area where possession and consumption is allowed while in possession of an Alcoholic Beverage.
7. Upon receipt of a Permit from the chief executive officer of the institution, the Permit holder or the Vendor may procure the applicable license to sell Alcoholic Beverages in accordance with the approved Permit.
8. The Permit shall set forth the time at which sale, service, possession and consumption of Alcoholic Beverages will be permitted, which times shall be strictly enforced. Service and sale of Alcoholic Beverages shall stop at a time in advance of the time of closure of the Permitted Event sufficient to allow an orderly and temperate consumption of the balance of the Alcoholic Beverages then in possession of the participants of the Permitted Event prior to closure of the Permitted Event.
9. The Permit holder and the Vendor shall assume full responsibility to ensure that no one under the legal drinking age is supplied with any Alcoholic Beverage or allowed to consume any Alcoholic Beverage at the Permitted Event.
 - a. The Permit holder must provide proof of insurance coverage including liquor legal liability in the amounts and coverage limits sufficient to meet the needs of the institution. The default coverage limit shall be \$1,000,000 minimum coverage per occurrence, but the institution may approve a different coverage limit in writing and list such limit in the

Permit. The insurance must list the Permit holder, the Vendor, the institution, the Board of Regents, and the State of South Dakota as additional insureds. Proof of insurance must be provided to the institution in the form of a formal endorsement to the policy evidencing the coverage and the required additional insureds.

- b. The Permit holder and the Vendor must indemnify the institution, the Board of Regents and the State of South Dakota for any and all claims that may arise that are related to the sale or consumption of Alcoholic Beverages at the Permitted Event.
 - c. For purposes of this section 3.B.9, when the Permit holder is an institutional employee acting within the course and scope of employment, such Permit holder will not be required to be listed in the insurance policy and will not be required to indemnify the institution, the Board of Regents, and the State of South Dakota.
 - d. For purposes of this section 3.B.9, when the Vendor has its own insurance coverage including liquor legal liability in the amounts and coverage limits sufficient to meet the needs of the institution, the Permit holder's insurance coverage will not need to (i) include liquor legal liability; or (ii) list the Vendor as additional insured.
10. The Permit, any required local catering permit, and applicable state or local licenses to sell Alcoholic Beverages shall be posted in a conspicuous place at the defined area where Alcoholic Beverages are authorized to be sold, prior to any sale of Alcoholic Beverages. Further, the sale, service and consumption of Alcoholic Beverages shall be confined to the specific event, area, or activity identified on the Permit application. Any Alcoholic Beverages allowed at the Permitted Event shall be supplied through Vendors to ensure compliance with any food service and pouring rights agreements. In no event shall the institution supply or sell Alcoholic Beverages directly.
11. Alcoholic Beverage making or distributing companies shall not be allowed to advertise goods or services on Institutional Facilities, unless otherwise expressly permitted by Board action or another Board policy.
12. These terms and conditions shall apply to both institutional and non-institutional groups using Institutional Facilities.

4. Institutional Permit Process and Reporting

- A. Each institution that decides to issue Permits for Permitted Events occurring on Institutional Facilities shall maintain a policy providing for an institutional Permit process. Permission for the sale of Alcoholic Beverages shall be evidenced by issuance of a written Permit by the chief executive officer of the institution, which may be issued only in response to a completed written application. A Permit may

- only be issued in conformity with this policy.
- B. In addition to the terms and conditions contained in section 3, an institution may develop and apply additional more restrictive terms and conditions for the issuance of a Permit.
 - C. The chief executive officer of the institution may deny any application for a Permit if s/he determines that the application for a Permit is, or having Alcoholic Beverages for sale at the event would be, inconsistent with this policy, applicable law, or the proper image and mission of the institution.
 - D. Each year by August 1, the chief executive officer of the institution, or designee, shall prepare an annual fiscal year report of institutional Permits approved by the chief executive officer of the institution during the last fiscal year and transmit the report to the Executive Director. This report will contain the following information about the Permitted Event: (1) the date, (2) a brief description of the event, (3) the Permit holder, (4) the Vendor, (5) the Institutional Facility used, and (6) descriptions of any alcohol-related incidents.

SOURCE: BOR, 2016



northern *State* university

Memorandum

To: Guilherme Costa, SD Board of Regents General Counsel

Cc: Tim Downs, NSU President
Todd Jordre, NSU Foundation CEO
Veronica Paulson, NSU VP of Finance and Administration

From: Josh Moon, NSU Director of Athletics *JM*

Date: 6/15/16

Re: Sale of Alcohol Beverages at Institutions Draft Policy (6:14), Section 3(11): advertisement of alcoholic beverage making or distributing companies on institutional facilities.

As we have discussed and are aware, the changing of South Dakota codified law 35-2-6.1 allows for two exceptions to pursue a license to serve beer/wine at permissible events authorized by the Board of Regents (BOR). Within the draft policy that has been developed by the BOR, section 3(11) prohibits the advertising of goods/services by distributing companies or alcohol beverage making companies on institutional facilities.

3. (11) Alcoholic Beverage making or distributing companies shall not be allowed to advertise goods or services on Institutional Facilities, unless otherwise expressly permitted by Board action or another Board policy.

Northern State University (NSU) is requesting to remove the specific advertising prohibition in 3(11) and allow each BOR institution to continue to have the ability to review/approve advertising opportunities within their respective campus facilities.

NSU has had a long established relationship with a local distributing company that has provided a significant amount of financial support to NSU. Attachment (A) provides a current picture of a backlit sign that has been in the Barnett Center/Wachs Arena for over 5 years. NSU and the local distributing company have worked very well together in designing appropriate and tasteful marketing opportunities including signage within NSU facilities (i.e., Wachs Arena).

Limiting the ability to continue with this type of signage may have a negative impact on revenue generation opportunities for NSU and other BOR institutions moving forward. NSU has proven it can successfully manage signage/advertising opportunities that are professional and appropriate for the facility with a positive message for our fans/supporters/students – “Here We Go Wolves.”

Attachment (A)

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TO: Guilherme Costa, SD Board of Regents General Counsel

FROM: Barry H. Dunn, SDSU President

DATE: June 17, 2016

RE: Sale of Alcohol Beverages at Institutions Draft Policy 6:14, Section B.3.11

As you are aware, SB 162 authorizes the sale of alcoholic beverages on University property as authorized by the South Dakota Board of Regents (SDBOR) and pursuant to appropriate licensure by the local authority. The current proposed SDBOR Policy 6:14 setting forth the rules related to the sale of defined alcoholic beverages at institutional facilities contains the following restriction:

B. 3. 11. Alcoholic Beverage making or distributing companies shall not be allowed to advertise goods or services on Institutional Facilities, unless otherwise expressly permitted by Board action or another Board policy.

South Dakota State University (SDSU) supports and requests removal of this clause from Draft Policy 6:14. SDSU currently has contracts for advertising related to alcoholic-beverage companies and a policy for processing such advertising. In addition, because the Draft Policy 6:14 is specific to the sales of alcohol, this section can cause confusion regarding advertising that could be allowed during times when the sale of alcohol is occurring and when there is no sale of alcohol occurring.

SDSU currently has contracts in place that facilitate institutional sponsorship by, and advertising for, alcohol-related business. In 2013, SDSU adopted an institutional policy that sets forth a process for reviewing requests for sponsorship and advertising by alcohol-related businesses.
<http://www.sdstate.edu/policies/upload/Institutional-Sponsorship-and-Advertising-for-Gaming-and-Alcoholic-Beverages.pdf>

The SDSU *Institutional Sponsorship and Advertising for Gaming and Alcoholic Beverages Policy 9:1*, contains important controls on this type of commercial advertising in order to ensure compliance with the SDBOR *Regents Drug Free Environment Policy 4:27*, other SDBOR policies, and compliance with applicable legal standards. Some of these controls include:

- Limitation on alcohol related advertising in academic venues;
- Prohibition on specific alcoholic beverage related advertising in University materials and in venue distributed materials;
- Controls on alcohol-related businesses or alcoholic beverages in University controlled media and facilities;
- Requirements for responsibility messaging; and
- Requirement for prior review of proposals for such advertising through University Marketing, University Counsel, and the Provost that also allows for discretion on location and length of advertising in off-campus locations.

The contracts currently in place have been approved through this SDSU policy process.

SDSU is requesting that the SDBOR remove the advertising prohibition contained in Draft Policy 6:14 section B.3.11 to allow the institutions under its control to continue to review and approve advertising and sponsorship opportunities locally. SDSU has shown it can positively manage institutional sponsorship and advertising related to alcoholic beverages and alcohol related businesses in a positive, professional, and appropriate manner. Curtailment of this ability will have a negative financial and relationship impact at SDSU.

cc Dennis Hedge, Interim Provost/V.P. for Academic Affairs
Wesley Tschetter, SDSU V.P. Finance and Business/CFO
Justin Sell, SDSU Director of Athletics
Mike Lockrem, SDSU Director of Marketing
Tracy Greene, SDSU University Counsel