

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 98-F-20

Date Issued: June 11, 1998

Requested by: James M. Hughes, Superintendent, North Dakota Highway
Patrol

- QUESTION PRESENTED -

Whether the notification form provided to persons charged with traffic offenses as required by N.D.C.C. § 39-06.1-07 must include the alternative disposition procedure set forth in N.D.C.C. § 39-06.1-10.1.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the notification form provided to persons charged with traffic offenses as required by N.D.C.C. § 39-06.1-07 need not include the alternative disposition procedure set forth in N.D.C.C. § 39-06.1-10.1.

- ANALYSIS -

N.D.C.C. § 39-06.1-07 sets forth the information which must be contained on notification forms to be provided to persons charged with certain traffic offenses or who may be subject to the procedures under N.D.C.C. ch. 39-20, the implied consent law. N.D.C.C. § 39-06.1-07 provides:

The licensing authority shall prepare notification forms and a temporary operator's permit as provided in section 39-20-03.1 or 39-20-03.2 to be delivered to persons charged along with the uniform traffic summons and complaint as provided in section 29-05-31. The notification forms must contain language, approved by the attorney general, informing persons charged with traffic violations, other than offenses listed in section 39-06.1-05, of the procedures available to them under sections 39-06.1-02 and 39-06.1-03 and informing persons who refuse a chemical test or onsite screening test under chapter 39-20 or who, on taking a chemical test, are found

to be in violation of subdivision a of subsection 1 of section 39-08-01, of the procedures available under chapter 39-20. The notification must also contain a schedule of points to be charged against a person's driving record or other operator's license penalties as provided by law, and a schedule of statutory fees and bond amounts as determined in accordance with sections 39-06.1-06 and 39-06.1-02.

Thus, the notification form must include four types of information:

1. The procedures available to the motor vehicle operator under N.D.C.C. §§ 39-06.1-02 and 39-06.1-03 when charged with a traffic violation other than offenses listed in N.D.C.C. § 39-06.1-05;
2. The procedures available under chapter 39-20 to persons who refuse either a chemical or onsite screening test, or who fail a chemical test;
3. A schedule of points to be charged against a person's driving record or other operator's license penalties as provided by law; and
4. A schedule of statutory fees and bond amounts as determined in accordance with N.D.C.C. §§ 39-06.1-06 and 39-06.1-02.

N.D.C.C. §§ 39-06.1-02 and 39-06.1-03 establish the procedures that a motor vehicle operator may follow when cited for a noncriminal traffic violation. N.D.C.C. § 39-06.1-02 sets forth the forfeiture of bond and court appearance procedures, and N.D.C.C. § 39-06.1-03 establishes the procedures to be followed if a person desires to contest the noncriminal traffic violation citation.

N.D.C.C. § 39-06.1-10.1, which was adopted by the 1991 Legislative Assembly, establishes an alternative disposition to a noncriminal traffic offense in certain circumstances. Under this section, a person may forfeit the required bond and elect to attend a driver training course. By virtue of the bond forfeiture, the offender would be deemed to have committed the violation. However, by completing the driver training course, the person avoids the assessment of up to five points on that person's driving record for the violation. N.D.C.C. § 39-06.1-10.1 provides:

A person issued a summons or notice to appear under section 39-07-07 may appear before the court and elect to attend a driver training course approved by the director in lieu of entry of points on the licensee's driving record. A person who elects to attend the course must so notify the court at the time of posting the bond, which is forfeited even though an election is made under this section. The person who makes the election shall pay the driver training course fee to the driver training course sponsor. When a person elects to attend the course, the point penalty of five points or fewer as provided for the violation by section 39-06.1-10 may not be assessed; provided, that proof of completion of the course is presented to the department within thirty days after the person notifies the court of the election. A person may not make an election under this section if (1) that person has made an election under this section within the twelve months preceding the date of issuance of the summons or notice to appear; (2) the offense is assigned six or more points; or (3) the offense is an offense listed in section 39-06.1-05. A person making an election under this section forfeits any point reduction option under section 39-06.1-13.

N.D.C.C. § 39-06.1-07 is explicit in the information which must be provided to the motor vehicle operator charged with a noncriminal traffic offense. This information does not include N.D.C.C. § 39-06.1-10.1 provisions. The legislative history of Senate Bill 2539, which was enacted as N.D.C.C. § 39-06.1-10.1, discloses that several amendments to the original bill were adopted, including the removal from the original bill of the ability of a motor vehicle operator to avoid adjudication of a noncriminal traffic violation. See Amendments to SB 2539 Before Sen. Comm. Trans. (Feb. 14, 1991). Neither the original bill nor the amendments to that bill made reference to N.D.C.C. § 39-06.1-07, nor was N.D.C.C. § 39-06.1-07 amended to include reference to N.D.C.C. § 39-06.1-10.1. Had the Legislative Assembly intended that the information on the notification form required by N.D.C.C. § 39-06.1-07 must include the alternative disposition set forth in N.D.C.C. § 39-06.1-10.1, that intent could have been easily accomplished by amendment to N.D.C.C. § 39-06.1-07.

The notification requirements of N.D.C.C. § 39-06.1-07 are clear and unambiguous. "Where terms of a statute are positive and unambiguous, exceptions not made by the Legislative Assembly cannot be read into the law. Walsvik v. Brandel, 298 N.W.2d 375, 377 (N.D. 1980). It is

June 11, 1998

Page 4

improper to attempt to construe the provisions of a clear and unambiguous statute to make additional requirements or proscriptions which the words of the statute do not themselves provide. Haggard v. Meier, 368 N.W.2d 539, 541 (N.D. 1985). A statute will not be interpreted as though language not present should have been added. Bouchard v. Johnson, 555 N.W.2d 81, 83 (N.D. 1996).

The provisions of N.D.C.C. § 39-06.1-10.1 cannot be impliedly or expressly read into the notification requirements of N.D.C.C. § 39-06.1-07. Whether a N.D.C.C. § 39-06.1-07 notification to be given to a person cited for a noncriminal traffic offense needs to include the N.D.C.C. § 39-06.1-10.1 procedures must be left to legislative action. Thus, while the notification need not include the provisions of N.D.C.C. § 39-06.1-10.1, there is no prohibition against furnishing the information either in the notification or possibly on the bond envelope. See N.D.C.C. § 39-06.1-02.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

Heidi Heitkamp
ATTORNEY GENERAL

Assisted by: Robert P. Bennett
Assistant Attorney General

bah