

N.D.A.G. Letter to Slorby (July 21, 1983)

July 21, 1983

Tom P. Slorby
Ward County State's Attorney
Ward County Courthouse
Minot, North Dakota 58701

Dear Tom:

Thank you for your letter of June 8, 1983, in which you request an answer to the question of whether Ward County is obligated to pay the costs of towing and storage of vehicles abandoned in Ward County which are taken into custody and impounded by order of the North Dakota Highway Patrol.

You correctly indicate that Section 39-26-04 of the North Dakota Century Code authorizes units of government to "take into custody and impound any abandoned motor vehicle." Section 39-26-02, N.D.C.C., defines "unit of government" to include a state department or agency, a county, city, township, or other political subdivision. Therefore, the North Dakota Highway Patrol, as a state agency, is authorized pursuant to Section 39-26-04, N.D.C.C., to take into custody and impound abandoned vehicles found within the counties of North Dakota including Ward County.

The key to determining whether Ward County or the North Dakota Highway Patrol is ultimately responsible for the payment of the costs of towing and storing abandoned motor vehicles in Ward County lies in the relevant language found in Sections 39-26-06(1) and 39-26-07(1), N.D.C.C. Section 39-26-06(1), N.D.C.C., states, in pertinent part, as follows:

...the unit of government taking it [abandoned motor vehicles] into custody shall give notice of the taking within ten days. [Emphasis supplied.]

Identical language as that underscored above appears in Section 39-26-07(1) which reads as follows:

39-26-07(1). RIGHT OF OWNER TO RECLAIM ABANDONED VEHICLE.

1. The owner, secured parties, or any lienholder of an abandoned motor vehicle shall have a right to reclaim such vehicle from the unit of government taking it into custody upon payment of all towing and storage charges resulting from taking the vehicle into custody within fifteen days after the due date of notice required by section 39-26-06. [Emphasis supplied.]

Thus, the language contained in Sections 39-26-06(1) and 39-26- 07(1), N.D.C.C., indicates that the unit of government initially taking an abandoned motor vehicle into custody is obligated to pay the towing and storage costs associated with such vehicle. Accordingly, if the North Dakota Highway Patrol takes custody of an abandoned motor vehicle in Ward County, then it is responsible for the costs of towing and storing such abandoned vehicle.

It should be noted that the above legal conclusion does not nor is it intended to interfere with any agreements, policies, or practices existing between the individual counties in North Dakota and the North Dakota Highway Patrol with respect to custody and disposition of abandoned motor vehicles.

In speaking with Colonel Norman Evans, the Superintendent of the North Dakota Highway Patrol, he informed me that the policy of the Highway Patrol now and in the past has been to cooperate with county officials to the extent of taking custody of abandoned motor vehicles and arranging for a towing firm to transport the vehicle to a safe impoundment lot. After such vehicle has been impounded, the counties historically have accepted the custody of the vehicle, arranged for the disposition, and also paid the attendant expenses including the storage and towing costs.

Colonel Evans also informed me that his department has neither the manpower nor the resources to handle the disposal of abandoned motor vehicles whether it be by public sale pursuant to Section 39-26-08, N.D.C.C., or by contract with a scrap iron processor under Section 39-26-10, N.D.C.C. With the Highway Patrol's position in mind, I would urge you to make every effort to work out an acceptable compromise with the Highway Patrol with regard to costs connected with abandoned motor vehicles taken into custody by the North Dakota Highway Patrol in Ward County.

Sincerely,

Robert O. Wefald

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