

## **N.D.A.G. Letter to Farland (Nov. 21, 1989)**

November 21, 1989

Mr. Darrell Farland  
Executive Director  
Governor's Council on  
Human Resources  
State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505

Dear Mr. Farland:

Thank you for your October 30, 1989, letter concerning mobility impaired parking and ramped curbing for wheelchairs.

Your first question concerns the 1989 amendment to N.D.C.C. § 39-01-15. 1989 N.D. Session Laws ch. 319. The legislature amended N.D.C.C. § 39-01-15(10) to provide that any person who stops or parks a vehicle that does not display a mobility impaired identification certificate in a parking space reserved for mobility impaired persons, is guilty of an infraction. A fine of \$100 must be imposed. Your question is the manner in which this infraction may be enforced.

An infraction is a criminal offense for which a maximum fine of up to \$500 may be imposed. N.D.C.C. § 12.1-32-01(7). To initiate a prosecution for an infraction offense, one must use a criminal complaint (N.D.R. Crim. P. Rule 3). However, in cases involving violations of statutes or ordinances relating to the operation or use of motor vehicles, the Uniform Traffic Complaint and Summons provided for by N.D.C.C. § 29-05-31 may be used to initiate the prosecution. If either a criminal complaint or the Uniform Traffic Complaint and Summons form is used, prosecution for violation of a criminal statute will comply with constitutional and statutory requirements. State v. Medearis, 165 N.W.2d 688, 692 (N.D. 1969).

N.D.C.C. § 39-01-15(10) relates to the operation or use of a motor vehicle. Thus, the Uniform Traffic Complaint and Summons may be used to bring the offender before the court.

Your letter mentions parking tickets. Because a parking ticket does not constitute a criminal complaint nor a Uniform Traffic Complaint and Summons, it has never been used to initiate prosecution for violation of laws concerning the use of motor vehicles. Instead, cases involving unpaid parking tickets are usually initiated by the criminal complaint method. Copies of the parking tickets are used as evidence to substantiate the claim of a violation of statute or ordinance.

In summary, to properly initiate an action for an infraction involving the use or operation of a motor vehicle, either a criminal complaint or a Uniform Traffic Complaint and Summons must be issued.

Your second question concerns the use of a city's general funds in providing ramped curbing for wheelchairs.

N.D.C.C. ch. 40-31 sets out the procedure for the construction and repair of curbing and gutters in cities. N.D.C.C. § 40-31-01.1 provides that whenever a city undertakes "extensive intersection curb and gutter repair or installation," it must provide ramped curbing at each intersection crosswalk for the convenience of persons confined to wheelchairs. N.D.C.C. § 40-31-02 provides that the expenses incurred in the building or repairing of curbing shall be paid by assessments which have been placed against the lot or parcel of land properly chargeable for the repair work.

All moneys received by a city from assessments for building or repairing curbing are kept in a separate fund designated as a curbing special fund. N.D.C.C. § 40-31-08. Payments for expenses incurred in building or repairing curbing pursuant to N.D.C.C. ch. 40-31 are to be paid out of the curbing special fund. N.D.C.C. § 40-31-09, and 40-31-10.

A city is not required to pay any expenses incurred in the building or repairing of curbing from funds raised by general taxation. N.D.C.C. § 40-31-07. Therefore, a non-home rule city is not required to use general fund moneys for building or repairing curbing projects instituted pursuant to provisions of N.D.C.C. ch. 40-31.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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