

**OPINIONS
62-148**

January 5, 1962 (OPINION)

MOTOR VEHICLES

RE: Emergency Vehicles - Use of Red Lights

Your letter request for an opinion dated December 28, 1961, has been received by this office.

You state that a situation is developing in our state in which privately owned and operated wreckers are mounting and using red flashing lights both within municipalities and on the highways of this state. You relate further that the question seems to revolve around the interpretation of sections 39-10-03, 39-11-20, 39-11-35, and Definitions no. 28 and no. 60 of title 39 of the North Dakota Century Code.

You have requested our opinion on the legality of the mounting of red lights on wreckers, and further, if it is our opinion that these lights are legal, then you ask for an opinion on any restrictions as to the use of the flashing red lights on privately owned wreckers.

Section 39-01-01 of the North Dakota Century Code, at subsection 28, titled DEFINITIONS, provides:

"DEFINITIONS. In this title, unless the context or subject matter otherwise requires:

8. 'Authorized emergency vehicle' shall mean vehicles of the fire department, police vehicles, and such ambulances and emergency vehicles of municipal departments or public service corporations as are designated or authorized by the local authorities;"

It is the opinion of this office that privately owned wreckers are not included among the definitions of what is an authorized emergency vehicle under this subsection.

Section 39-01-01 at subsection 60 (DEFINITIONS) provides:

60. 'Authorized emergency vehicles' shall include any of the following types:

- (a) A vehicle publicly or privately owned and operated in the performance of his duty, by a member of any police or fire department, including the North Dakota game and fish department, any sheriff or deputy sheriff, or any member of the North Dakota highway patrol.
- (b) A vehicle publicly owned and operated in the performance of his duty by a member of any federal governmental agency, to include all branches of the military service, when engaged in police, fire fighting or ambulance type service.

- (c) When used in responding to emergency calls, any ambulance, wrecker, or civil defense vehicle equipped with a top red light, three flares and three red flags with stake mounts; and"

We note that the language in paragraph (c) of said subsection would seem to indicate that any ambulance, wrecker or civil defense vehicle, when used in responding to emergency calls, and when equipped with a top red light, three flares and three red flags with stake mounts, is classified as an authorized emergency vehicle. Although it could be argued that the wreckers and vehicles referred to in this definition must be those which are referred to in subsection 28, that is, those which have been designated or authorized by local authorities, we do not believe that such an interpretation is sound in view of the specific reference to "wrecker" which is found in paragraph (c) of subsection 60. The crux of the matter then in this case lies in whether or not a vehicle can be considered to be an authorized emergency vehicle. It is the opinion of this office then, that a privately owned wrecker, when used and operated for emergencies and when in a situation which constitutes a vehicular hazard, if properly equipped, is an authorized emergency vehicle under the definitions as they now read. We are aware of the possible abuse of this privilege by some privately owned and operated wreckers, as to what constitutes an emergency is also a question of fact based on all the attendant circumstances. However, legislative changes should then be recommended to correct the situation and such changes should include specific statutes dealing with privately owned wreckers and service cars, limiting or restricting their use to certain circumstances.

"In ordinary acceptance or comprehension, a 'hazard' . . . means and covers a risk or peril, assumed or involved. State v. Hagan, 175 NW 372, 377, 44 ND 306." Vol. 19, Words and Phrases, at page 110.

"A 'hazard' is an unforeseen disaster or accident. Pan Am. Ins. Co. v. Cooper Butane Co., 300 S.W.2d. 651, 655, 157 Tex. 102."

"'Hazard' is an exposure to chance of loss or injury. People v. Miller, 327 P.2d. 236, 240, 161 C.A. 2d. Supp 842." Vol. 19, Words and Phrases, 1961 Pocket Supp. at page 30.

A vehicular hazard then embodies the preceding definitions, along with obvious reference to vehicles. This term would then include all the customary traffic rules, regulations, ordinances and statutes which make certain types of vehicle operation a prohibited act. It would also include accident and collision scenes where both vehicles and human beings are involved and where the congested traffic or the physical characteristics of the accident scene are such that danger, risk or peril to humans, or loss of property could occur.

Next, we come to the term 'emergency.' In regard to motor vehicles and traffic situations, a wide degree of latitude in interpreting the term exists. Generally, however, the term means ". . . an unforeseen combination of circumstances calling for immediate action,

and also, less properly, an exigency. . . ."

"An 'emergency' is transitory in character, and when the 'emergency' ceases the stopping of a motor vehicle on the highway comes within the statutory prohibitions and not within the statutory proviso that a vehicle may be stopped on the highway in case of an 'emergency,' and when, under all the facts, a reasonable time has elapsed to overcome the 'emergency' compelling or permitting the stopping, the 'emergency' will be considered in law as having ceased and the statutory prohibitions, not the proviso, of the statute are then applicable. Pugh v. Akron-Chicago Transportation Co., 28 N.E.2d. 1015, 1023, 64 Ohio App. 479." Vol. 14, Words and Phrases, p. 447. See also in this connection, Mullins v. Henderson, 170 P.2d. 118, 126, 75 Cal. App. 2d. 117.

One other example of the wide latitude given in interpreting the law is found as follows:

"An ambulance owner, who ran through a red light at a street intersection and collided with an automobile while taking a patient to a hospital, was contributorily negligent as a matter of law in absence of showing of an 'emergency' within statute authorizing ambulance drivers to disregard traffic signals in emergencies; the mere fact that a patient was being taken to the hospital being insufficient to show that an 'emergency' existed. Oakley v. Allegheny County, 193 A. 316, 128 Pa. Super 8." Vol. 14, Words and Phrases, at page 448.

It, therefore, becomes in most cases a question of fact as to whether or not a certain situation or occurrence can be classified as an emergency. Common sense and reason should be utilized to the fullest to ascertain whether or not a particular situation is or is not an "emergency." It is very difficult to set out specific guidelines for you to follow. However, the following illustrations may be of help to you.

If a privately owned wrecker was summoned to the scene of an intersection or highway accident for the purpose of assisting in extricating people from the wreckage, this would obviously seem to be an emergency, and red flashing lights would probably be properly used by the wrecker operator on the way to the scene, and while at the scene so as to avoid or help prevent other vehicles from becoming involved in the accident scene itself. Likewise, if the wrecker was engaged in towing the wrecked vehicles away from the scene, and to a garage, it might be proper for the wrecker to utilize its special lights, so as to avoid other mishaps en route. Further, if a wrecker were summoned to extricate a stalled vehicle from a snowdrift, where there was a possibility of blocking traffic or other risk or peril to the persons around the scene, it would appear to be proper for the wrecker to utilize his special lights while engaged in such extrication, but not while going to or away from the scene.

If, however, the wrecker was called to merely help a stalled motorist start his car by using the so called quick start portable batteries (now in common use), the wrecker operator would clearly not be authorized to utilize the special lights or flares while going to and

from the scene. It is entirely possible, however, that he could use them at the scene, if weather or traffic conditions were such that danger, risk, or peril could occur to other motorists or persons or property at the scene.

There are such a multitude of possible situations, that it would be impossible for us to consider them all, but it hoped that the preceding illustrations and examples would be helpful to you.

Since we have determined that privately owned wreckers are within the definition of authorized emergency vehicles, this would also bring them within the privileges set down in section 39-10-03 of the North Dakota Century Code. Further, section 39-11-20 of the 1961 Session Laws (Pocket Supplement) would also include privately owned wreckers as authorized emergency vehicles and allow them the same privileges. Section 39-11-35 of the North Dakota Century Code also would include privately owned wreckers as authorized emergency vehicles.

We conclude by reiterating that these privately owned wreckers, when used or utilized as authorized emergency vehicles must in any case, comply with the provisions of subsection 60 of section 39-01-01 of the North Dakota Century Code in regard to having the proper equipment mounted on them, including the top red light, three flares and three red flags with stake mounts.

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