

OPINION
65-181

February 27, 1965 (OPINION)

Mr. John A. Alphson

State's Attorney

Grand Forks County

RE: Motor Vehicles - Operators Licenses - Exemptions

This is in reply to your letter inquiring as to requirements for obtaining drivers' licenses in the state of North Dakota by individuals who have resided here by reason of their employment.

You call our attention to section 39-06-02 of the 1963 Supplement to the North Dakota Century Code and more particularly subsection 5 thereof which provides:

"WHAT PERSONS ARE EXEMPT FROM LICENSE. - The following persons are exempt from license hereunder:

* * *

5. A person over sixteen years of age who becomes a resident of the state of North Dakota and who has in his possession a valid operator's license issued to him pursuant to the laws of some other state or province or by military authorities of the United States may operate a motor vehicle for a period of not more than sixty days after becoming a resident of this state, without being required to have a North Dakota operator's license. * * *."

You also call our attention to the provisions of subsection 3 of said section 39-06-02 of the North Dakota Century Code relating to an exemption for nonresidents, to section 39-01-01 (we assume you refer to subsection 33 as same is contained in the 1963 Supplement) relating to the definition of "nonresident" and request our opinion in regard to whether the residency requirement contemplated in the above-quoted subsection 5 of section 39-06-02 would require a physical year's residency in the state of North Dakota before the sixty day period would commence to run or whether it would be intended that upon the individual taking the physical residency the sixty days would start to run.

The law of "domicile" and "residence" is quite extensive. There are numerous exceptions to same with regard to particular fields of the law. However, there appears to be no exception applicable to the above-quoted portion of section 39-06-02. On such basis residence would be determined on the basis of the rules set out in section 54-01-26 of the North Dakota Century Code.

The sixty days specified in the above-quoted portion of section

39-06-02 would commence at the point in time where there was the union of act and intent referred to in subsection 7 of said section 54-01-26. As a matter of practicality it might be simpler to prove the "intent" referred to in said subsection 7 after some time had elapsed; however, from a strictly theoretical viewpoint "residence" would commence with the union of act and intent. There definitely would be no basis for requiring a year's "physical residence" though admittedly a year's physical residence would help to prove the requisite "intent." Also from a practical standpoint, where the year's physical residence was provable to show "intent" under section 54-01-26, the "intent" could date from any part of the year, and would probably show violation of our operator's licensing statute for the greater part of the year.

HELGI JOHANNESON

Attorney General