

**OPINION
68-135**

April 24, 1968 (OPINION)

Colonel Ralph M. Wood

Superintendent

Highway Patrol

RE: Motor Vehicles - Operators License - Nonresidents

This is in reply to your letter of April 19, 1968, relative to the privilege of a nonresident of North Dakota to operate a motor vehicle in the state of North Dakota. You state the following facts and questions:

It is recognized that under normal conditions, section 39-06-02 apply to the operation of any motor vehicle by a nonresident who is at least sixteen years of age and who has in his possession a valid operator's license issued to him by his home state.

The question comes under the provisions of 39-06-14:

Is it permissible and lawful for a nonresident person, who is at least sixteen years of age and who has in his possession a valid operators license issued to him in his home state, to operate a motorcycle in North Dakota? Secondly: If a foreign driver's license does not cover the operation of a motorcycle in the home state, is it possible for an individual who possesses a standard driver's license to then operate a motorcycle in North Dakota?"

Section 39-06-02(2) of the North Dakota Century Code, as amended, provides:

The following persons are exempt from license hereunder:

2. A nonresident who is at least sixteen years of age, who has in his immediate possession a valid operator's license issued to him in his home state or country, may operate a motor vehicle in this state;"

Section 39-01-01(32) of the North Dakota Century Code, as amended, defines the term "motor vehicle" to include "every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operate upon rails." This definition obviously includes a motorcycle even though that term is also defined by statute. See section 39-01-01(32a) as amended.

We note that section 39-06-02(2) contains no exceptions. It permits any nonresident who is at least sixteen years of age and who holds a valid operator's license issued to him in his home state to operate a motor vehicle in North Dakota. The term "motor vehicle" as used in the section is not limited.

Section 39-06-14 of the North Dakota Century Code, as amended, refers to licenses issued to operators by the state of North Dakota. As you are aware there is a special classification (class four) which applies to the operation of a motorcycle. However, this section refers only to licenses issued to persons in North Dakota and only to licenses issued by the state of North Dakota. The statute does provide that any holder of a classified license who drives a motor vehicle otherwise than as permitted by the class of license issued to him shall be deemed to be driving a motor vehicle without being duly licensed. However, a nonresident who is at least sixteen years of age and who holds a valid operator's license from his home state does not need a North Dakota license. Therefore, this section cannot be applicable to such person. Whether such conclusion is logical or gives to nonresident drivers privileges not granted residents of this state is a matter of legislative concern.

In direct reply to your first question, it is our opinion it is permissible and lawful for a nonresident person, who is at least sixteen years of age and who has in his possession a valid operator's license issued to him in his home state, to operate a motorcycle in North Dakota. It is our further opinion that he may operate a motorcycle in this state even though the foreign license does not cover the operator of a motorcycle in his home state.

HELGI JOHANNESON

Attorney General