

**OPINION
68-218**

September 30, 1968 (OPINION)

Honorable Ralph M. Wood

Superintendent

North Dakota Highway Patrol

RE: Motor Vehicles - Emergency Vehicles - Security Agencies

This is in response to your letter in which you state the following:

We have, in the state of North Dakota, several privately owned and operated security agencies providing patrol service to commercial concerns. Usually this service is provided in the outlying districts of the more metropolitan areas.

The vehicles driven by these security agencies are frequently equipped with such standard police equipment as a red top light; siren and radio. From a practical standpoint, when the vehicles are so equipped it is difficult, if not impossible, for the general public to distinguish between an authorized police unit and the private agency unit."

You then ask the following questions:

1. May a privately owned and operated security agency, which is performing a police function but is not supported by public funds nor deputized by any authorized agency, equip their vehicles with, and use in the performance of the duties, any of that equipment provided for police agencies by Section 39-01-01 of the North Dakota Century Code for Class A emergency vehicles.
2. If the answer to the above is yes, do these vehicles and operators then have the same privileges of exception as provided for a Class A emergency vehicle in the area also as provided for by Section 39-10-03 of the North Dakota Century Code."

The Legislature, under Chapter 39-10 of the North Dakota Century Code specifically set out what equipment may be used on certain vehicles and what the operators of such vehicles may do. To further clarify and expedite this, specific provisions were created for Class A, B and C emergency type vehicles. Such provisions are as follows:

39-10-03. CLASS A AUTHORIZED EMERGENCY VEHICLES.

1. The driver of a class A authorized emergency vehicle may:
 - a. Park or stand, irrespective of the provisions of this chapter;
 - b. Proceed past a red or stop signal or stop sign, but

only after slowing down as may be necessary for safe operation;

- c. Exceed the speed limit so long as he does not endanger life or property;
 - d. Disregard regulations governing direction of movement or turning in specified directions.
2. The exceptions herein granted to a Class A authorized emergency vehicle shall apply only:
 - a. When the authorized emergency vehicle is in pursuit of or apprehension of a violator or a suspected violator requiring the use of these exemptions;
 - b. When the Class A authorized emergency vehicle is being operated in response to a reported emergency involving a possible personal injury, death or damage to property, and when giving audible signal by siren or when giving adequate warning by use of a flashing red light which is visible under normal atmospheric conditions for at least five hundred feet;
 - c. In any instance when the head of a law enforcement agency deems advisable within the area of his jurisdiction for the protection of person and property and when giving audible signal by siren or when giving adequate warning by use of a flashing red light which is visible under normal atmospheric conditions for at least five hundred feet.
 3. No emergency vehicle shall display or permit to be displayed any red lamp except when operated on official business.
 4. Vehicles operated as emergency fire apparatus owned or operated by a duly organized fire department while responding to an emergency may use revolving white or red lights. No other vehicles may use revolving white lights."

39-10-03.1. CLASS B AUTHORIZED EMERGENCY VEHICLES.

1. The driver of class B authorized emergency vehicles may:
 - a. Park or stand, irrespective of the provisions of this chapter;
 - b. Exceed the speed limit so long as he does not endanger life or property during the time of a local or national disaster;
 - c. Disregard regulations governing direction of movement or turning in specified directions.
2. The exceptions herein granted to a class B authorized emergency vehicle shall apply only when the authorized

emergency vehicle is displaying an amber light visible under normal atmospheric conditions for a distance of five hundred feet in any direction, and

- a. When it is necessary for the authorized emergency vehicle to use these exemptions for the immediate protection of life or property;
- b. When an authorized emergency vehicle is stopped on a highway for the purpose of performing a duty as required of him; or
- c. When traveling at a speed slower than the normal flow of traffic."

39-10-03.2. CLASS C AUTHORIZED EMERGENCY VEHICLES. All class B specifications shall apply except that a rotating blue flashing light shall be displayed."

Under subsection 1 of Section 39-01-01 the class of emergency vehicles were defined as follows:

39-01-01. DEFINITIONS. In this title, unless the context or subject matter otherwise requires:

1. Authorized emergency vehicles shall mean:

- (1) Vehicles of a governmental owned fire department;
 - (2) Vehicles when operated by or under the control of a police officer having authority to enforce the provisions of this title pertaining to all motor vehicles or by a salaried employee of any municipal police department within the municipality or by any sheriff or deputy sheriff not to include special deputy sheriffs, or by the warden of the state penitentiary and his authorized agents;
 - (3) Ambulances;
 - (4) Vehicles operated by or under the control of the commissioner, and district deputy commissioner, and district deputy game warden of the North Dakota game and fish department;
 - (5) Vehicles owned or leased by the United States Government used for law enforcement purposes;
 - (6) Vehicles designated for the use of the adjutant general and assistant adjutant general in cases of emergency;
- b. Class B authorized emergency vehicles shall mean wrecker and such other emergency vehicles as are authorized by the local authorities;

- c. Class C vehicles used by civil defense directors while used in the performance of emergency duties;

* * *."

These sections have been modified and revised from time to time for clarification.

It is observed that under subsection 3 of Section 39-10-03, no emergency vehicle shall display or permit to be displayed any red lamp except when operated on official business. This clearly indicates that only emergency vehicles may use a red lamp but only on official business.

As to the vehicle you describe in Paragraph No. 1 of your question, and based upon the information given, such vehicle would not come within the statutory definition of either Class A, B or C emergency vehicles.

It is, therefore, our opinion that a privately owned and operated security agency which is performing a police function but is not supported by public funds or deputized by any authorized agency may not use any equipment which is authorized for Class A emergency vehicles. Such vehicles do not meet the statutory definitions of any class of the emergency vehicles.

Because of the answer given to Question No. 1, there is no need to answer Question No. 2, because the provisions of Section 39-10-03, Section 39-10-03.1 and Section 39-10-03.2 of the North Dakota Century Code apply only to emergency vehicles as defined by statute.

HELGI JOHANNESON

Attorney General