

OPINION
69-216

October 20, 1969 (OPINION)

Colonel Ralph M. Wood

Superintendent

North Dakota Highway Patrol

RE: Motor Vehicles - Emergency Vehicles - Authority to Disregard

Traffic Regulations

This is in reply to your request for further opinion with regard to Class B and C emergency vehicles and their authority to cross the median on Interstate 94 type highways at other than interchange areas.

Class B and C emergency vehicles are defined by subdivisions b and c of subsection 1 of Section 39-01-01 of the 1969 Supplement to the North Dakota Century Code, as follows:

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

1. Authorized emergency vehicles:

* * *

b. Class B authorized emergency vehicles shall mean wrecker and such other 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;

* * *."

The general principles mentioned in our opinion dated September 19, 1969, as to construction of statutes governing movement of vehicles with regard to emergency vehicles, relate basically to police and fire department vehicles which, under our statutes, would generally come within the definition of Class A emergency vehicles. In the absence of specific statutes, such as Sections 39-10-03, 39-10-03.1, and 39-10-03.2 of the 1969 Supplement to the North Dakota Century Code, there might be some question as to whether similar principles of construction would apply to vehicles designated as Class B and Class C emergency vehicles. However, noting the specific provision of subsection c of said Section 39-10-03.2, authorizing disregard of regulations governing direction of movement or turning in specified directions, and the provision of said Section 39-10-03.2 that all Class B specifications shall apply except that a rotating blue flashing light shall be displayed, it is our opinion that drivers of Class B and Class C authorized emergency vehicles may disregard the

regulations with regard to crossing the median on Interstate 94 type highways where the conditions and specifications of said Sections 39-10-03.1 and 39-10-03.2 are met. We note that the restrictions contained in Section 39-10-03.1 as to use of this exception differ from those imposed upon Class A emergency vehicles in Section 39-10-03. Thus, we would assume that subsection 2.c. of said Section 39-10-03.1 would not apply to crossing the median in that it refers to a speed slower than the normal flow of traffic, (there is no normal flow of traffic across the median). Subsection 2.b. of said Section 39-10-03.1 would not apply to crossing the median in that it refers to stopping on the highway - not on the median. Subsection 2.a. of said Section 39-10-03.1 would apply to Class B and C authorized emergency vehicles crossing the median.

On such basis it is our opinion that Class B authorized emergency vehicles may cross the median 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 where it is necessary for the authorized emergency vehicle to use these exemptions for the immediate protection of life and property. Also on such basis, it is our further opinion that Class C authorized emergency vehicles may cross the median only when the authorized emergency vehicle is displaying a rotating flashing blue light and when it is necessary for the authorized emergency vehicle to use these exemptions for the immediate protection of life and property.

We do not find further express statutory provisions specifically establishing further restrictions on the authorizations contained in these statutes, though we should note that what has been considered herein is the exemption only from the statutory restriction on the malum prohibitum offense. We do note that the current amendments of these statutes do not contain language such as that contained in original provisions in this regard, such as, * * * The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.", and from this we would assume that such restrictions are no longer a part of this statute. However, we do note that there is no provision in the current Sections 39-10-03, 39-19-03.1 and 39-10-03.2 which exempt the operator of an authorized emergency vehicle, for example, in disregarding regulations governing direction of movement or turning in specified directions from such further regulations as Section 39-08-01 of the 1969 Supplement to the North Dakota Century Code with regard to driving while under the influence of intoxicants, or Section 39-08-03 of the North Dakota Century Code with regard to reckless driving. On such basis, while it is our opinion that the cited statutory provisions do exempt the operators of Class A, Class B and Class C authorized emergency vehicles from statutory regulations of crossing the median on Interstate 94 type highways, they do so only to the extent limited therein and do not exempt the drivers of such authorized emergency vehicles from other statutory regulations governing traffic.

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