

**OPINION
69-223**

September 29, 1969 (OPINION)

Coloner Ralph M. Wood

Superintendent

North Dakota Highway Patrol

RE: Motor Vehicles - Interstate Highways - Crossing Median By

Emergency Vehicles

This is in reply to your letter of 23 September 1969 with regard to emergency and other vehicles crossing the median on Interstate No. 94 type roadways at other than interchanges.

Your questions are stated as:

1. Is it illegal to cross the median on Interstate 94 type roadways at other than interchange areas with a motor vehicle?
2. Does an emergency vehicle have the authority to cross the median on Interstate 94 type highways at other than interchange areas?"

You call our attention to the provisions of Sections 39-10-19 and 39-10-20 of the North Dakota Century Code.

Generally speaking your first question is answered in the affirmative, assuming that by the term "interchange area" you refer to what is called in Section 39-10-19 "an opening in such physical barrier or dividing section or space or at a crossover or intersection established by public authority" and what is called in Section 39-10-20 "such entrances and exits as are established by public authority." It is our conclusion that the phrase "established by public authority" in each of these sections is intended to modify each of the prior designated areas of crossing, leaving or entering, i.e., openings, crossovers, intersections, exits and entrances. Actually, it would appear to us that these two statutory sections are designed to update prior prohibitions against making so-called "U-turns" and the direction of driving upon the right hand lanes of roadways in view of the improved facilities available in the form of so-called "Interstate", "Super", "Turnpike", "4-lane", etc., highways. While they do contain an absolute prohibition of driving on what you refer to as the "median" of such highways, their obvious purpose is to appropriately regulate use of the median in accomplishing the ultimate result of regulation of direction of movement of traffic and methods of turning in such movements of traffic. The fact, however, that an individual motorist would not make a "U-turn" or change his direction of travel in utilization of such median would not, in our opinion, excuse violation of the absolute prohibition of driving on the median insofar as these statutes do appear to create a new *malum prohibitum* offense.

Your second question appears to present a more difficult problem. We note in 7 Am. Jur.2d. at page 727, Automobiles and Highway Traffic, Section 172, the very general statement that:

* * * There is authority to the effect that even without an express exemption, traffic regulations, including those relating to speed, are inapplicable to police or fire department vehicles while on active duty, or other vehicles engaged in emergency governmental service, and that a violation of traffic regulations while such vehicles are on active duty does not give rise to criminal liability if the care which is exercised for the safety of others is reasonable under the circumstances. * * * ."

And in support thereof they cite other authorities and the decision in Balthasar v. Pacific Electric R. Co., 187 Cal. 302, 202 P. 37, 19 A.L.R. 452 as holding:

"The provisions of a statute requiring 'all vehicles approaching an intersection', in turning to the left, to go beyond the center of the intersection, and the provision that 'no person' should drive a motor vehicle on the highway in excess of a certain speed, were held not applicable to fire or police apparatus, although the language used was broad enough to include them, the court applying the fundamental rule that general language should not be construed to include the government or its agencies unless expressly included by name."

We note, however, that in the 1969 Supplement thereto they cite the decision of White v. Doe, 207 Va. 276, 148 S.E.2d. 797, holding police subject to laws governing overtaking in intersection in the absence of statutory exception therefrom.

North Dakota's statutes are quite explicit in regard to the exception of emergency vehicles from some of these traffic rules. Thus, Section 39-09-06 of the North Dakota Century Code makes certain exceptions to the speed limits for specified emergency vehicles. We would assume that in the type of situation described by your question, the applicable exceptions would be those specified in subsection 1(d) of Section 39-10-03 of the North Dakota Century Code assuming the other conditions of that statute were met. Even though a new malum prohibitum offense is created by Sections 39-10-19 and 39-10-20 of the North Dakota Century Code, we feel that for this purpose such sections are obviously regulations governing direction of movement or turning in specified directions. In view of the specific provisions granting these exceptions and the conditions imposed thereon, it is our opinion that North Dakota emergency vehicles do not have the authority to cross the median on Interstate 94 type highways at other than openings, crossovers, intersections, exits or entrances established by public authorities except in the instances and to the extent such authority is granted in said Section 39-10-03 of the North Dakota Century Code. Thus, in crossing the median on Interstate 94 type highways at other than interchange areas in response to an emergency call or when in the pursuit of an actual or suspected violator of the law, the driver of an emergency vehicle is permitted to disregard the provisions of Sections 39-10-19 and

39-10-20 providing that the vehicle is being operated upon official business, that the driver sounds an audible signal by bell, siren, or exhaust whistle, or gives adequate warning by use of a flashing red light which is visible under normal atmospheric conditions for at least five hundred feet and further providing that the driver of the authorized emergency vehicle would still have the duty to drive with due regard for the safety of all persons, and that such driver would not be protected from the consequences of this reckless disregard for the safety of others.

HELGI JOHANNESON

Attorney General