

**OPINION
69-234**

April 10, 1969 (OPINION)

Mr. Walter R. Hjelle

State Highway Commissioner

RE: Motor Vehicles - Slow Moving Vehicle Emblems - Exemptions

In your letter of April 2, 1969, you requested an opinion from this office on certain questions involving the interpretation of Senate Bill 202. These questions have been summarized for purposes of this opinion as follows:

- (1) Can the Highway Commissioner, by virtue of his authority to adopt standards and specifications for slow moving vehicle emblems, create an exemption from the provisions of Senate Bill 202, for road construction or maintenance equipment?
- (2) Did the Legislature intend the provision of Senate Bill 202 to apply to road construction equipment operated within construction or maintenance zones, when such zones are adequately marked and signed?"

The first section of Senate Bill 202 is pertinent to the questions you have raised, and that section states in part:

Section 1. Slow-moving vehicles required to display identification emblem. All implements of husbandry, as defined in Section 39-01-01, of the North Dakota Century Code, and machinery, including all road construction machinery, which is designed for operation at a speed of twenty-five miles per hour or less, shall display a triangular slow-moving vehicle emblem whenever it is operated upon a highway in the state of North Dakota. Such emblem shall be mounted so as to be visible from a distance of not less than five hundred feet to the rear. The highway commissioner shall adopt standards and specifications for the design and position of the mounting the slow-moving vehicle emblem. * * *

In response to your first question, it should be noted that the delegation of power to you to prescribe by rules and regulations, has been limited by the language of the legislative grant. The authority of the Highway Commissioner relates to the standards and specifications of the design and position of the emblem only, and does not permit the use of this power to create exemptions to the law's general application. Furthermore, the provisions of Senate Bill 202 will in all likelihood be incorporated into Ch. 39-21, N.D.C.C., which governs motor vehicle equipment. Under the provisions of that chapter, there is no authority whereby the Highway Commissioner could authorize the operation of any motor vehicle lacking the equipment required thereunder.

It is recognized that Section 39-07-05, N.D.C.C., does grant certain exemptions for highway maintenance or construction vehicles. That

section provides:

"Applicability of Provisions of Chapters. The provisions of Chapter 39-08 through 39-13 applicable to the drivers of vehicles upon the highways, shall apply to the drivers of all vehicles owned or operated by this state or any county, district, or other political subdivisions of this state subject to such specific exceptions as set forth in such chapters. The provisions of such chapters shall not apply to persons, teams, motor vehicles, and other equipment while actually engaged in work upon the surface of a highway, but shall apply to such persons and vehicles when traveling to or from such work, * * *"

The exemption provided in the above quoted section is applicable only to the operation of a motor vehicle, and does not extend to the provisions of Ch. 39-21, which governs the equipment for motor vehicles. Therefore this particular section would not provide your office with the necessary authority to waive any of the requirements of Senate Bill 202 pertaining to highway construction or maintenance vehicles.

With respect to your question, the Legislature was very specific in requiring the slow moving vehicle emblem on the enumerated equipment, whenever it is operated upon a highway in the State of North Dakota. It would be my impression that the Legislature recognized, in this bill, the potential hazard of a slow moving vehicle being operated on a highway designed for a high speed traffic flow. Thus, when a slow moving vehicle is operated on a highway, it is required to give warning of its presence by the installation of the slow moving vehicle emblem. Therefore, it would be my opinion that whenever a slow moving vehicles operating on the highway would be required to be utilized as a highway for public travel, even though it may be in a construction zone and signed and marked pursuant to statute, the slow moving vehicles operating on the highway would be required to be marked in accordance with the provisions of Senate Bill 202. The only exception to this requirement would be where the construction zone is absolutely free of public travel. Specifically, I am thinking of the instance where the construction is for a highway on a new location, or where the highway is within the construction zone, but a detour is provided for the traveling public.

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