

**OPINION
70-228**

January 2, 1970 (OPINION)

Colonel Ralph M. Wood

Superintendent

North Dakota Highway Patrol

RE: Motor Vehicles - Operators Licenses - Highway Construction Proje

This is in reply to your request for an opinion with regard to whether or not an operator's license is required to operate a motor vehicle, as defined by subsection 32 of Section 39-01-01 of the North Dakota Century Code, as amended, on construction projects located off from existing traveled highways.

You give as an example of such a project an instance where a new roadbed is being built in virgin territory such as an interstate construction project.

You ask further where a highway is under construction, but is open to the public, would an operator's license be required for a motor vehicle to be operated on such a project.

The first sentence of Section 39-06-01 of the 1969 Supplement to North Dakota Century Code provides:

OPERATORS MUST BE LICENSED. No person, except those hereinafter expressly exempted, shall drive any motor vehicle upon a highway in this state unless such person has a valid license as an operator under the provisions of this chapter.
* * *

No exemption is provided for operators of motor vehicles used in highway construction projects. The word "highway" is defined in subsection 21 of Section 39-01-01 of the 1969 Supplement to the North Dakota Century Code as:

1. 'Highway' shall mean the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel; * * *."

Under the example you give it would appear to us that construction projects located off from existing traveled highways, such as where a new roadbed is being built in virgin territory, where same is still closed to the public, would not constitute a "way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel" and would therefore not be a highway until opened for use by the public, and an operator's license would not be required to operate a motor vehicle upon such project. Where, however, an existent highway is being reconstructed, repaired or improved, and same is kept open to the public during such period of reconstruction, repairing or improvement, same would constitute a way

publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel. On such basis the project would be a "highway" and an operator's license would be required to operate a motor vehicle upon such project. Even on a new, unopened highway, presence of a passenger vehicle might be some evidence that public highways had been utilized to get the vehicle to the project.

HELGI JOHANNESON

Attorney General