

**OPINION
70-230**

October 23, 1970 (OPINION)

Mr. Charles Bosch

Registrar

Motor Vehicle Department

RE: Motor Vehicles - Motorcycles - Modification

This is in reply to your letter of date October 19, 1970, with regard to the application of section 39-21-45.1 of the 1969 Supplement to the North Dakota Century Code.

You indicate you are asking our advice regarding the legality of registering a motorcycle that has been modified by extending the front wheel and front end assembly. You enclose copies of correspondence you have had with regard to a particular situation, and you inform us of the position taken on the matter by the special assistant attorney general for your department.

The applicable statutes would appear to be sections 39-21-45.1 and subsection 1 of section 39-04-06 of the 1969 Supplement to the North Dakota Century Code. These statutes provide:

39-21-45.1. MODIFICATION OF MOTOR VEHICLES. It shall be unlawful for any person to operate a motor vehicle of a type required to be registered under the laws of this state with an unloaded weight of six thousand pounds or less upon a public highway with either the rear or front end suspension system or steering mechanism altered or changed from the manufacturer's original design, except that nothing contained herein shall prevent the installation of manufactured heavy duty equipment to include shock absorber and overload springs, nor shall anything contained herein prevent a person from operating a motor vehicle on a public highway with normal wear of the aforementioned systems and mechanism and provided further that the normal wear shall not effect the control of the vehicle through the steering mechanism."

39-04-06. WHEN REGISTRATION RESCINDED. The department shall rescind and cancel the registration of a motor vehicle:

1. When the department shall determine that a vehicle is unsafe or unfit to be operated or is not equipped as required by law; or

Looking to the terms of the first statute quoted, we note that it in express terms forbids operation of a motor vehicle with front suspension system altered or changed from the manufacturer's original design, with further limitations with regard to registration requirements, unloaded weight, etc., place of operation, etc. Looking to the second statute quoted, we would assume that on the basis of the material presented the department could properly

determine that the vehicle is not equipped as required by law upon completion of the proposed alteration project, and at such point could rescind registration. We note the prohibition of operation of such vehicles on the highway contained in quoted section 39-21-45.1 and, of course, we note the prohibition of operation of a motor vehicle upon a highway where registration has been canceled or revoked under the provisions of section 39-04-07 of the North Dakota Century Code. The term highway as used in this context would necessarily include city streets.

Considering said section 39-21-45.1 as a whole, we believe it obvious that the legislative assembly was not intending to prohibit artistic endeavor, but rather was looking to the safety advantages of requiring vehicles to have the advantages of a manufacturer's engineering staff, federal regulation of such manufacturer's production, financial liability of such manufacturer, etc., as opposed to the facilities available to the average "do-it-yourselfer." On such basis we can understand your departmental attorney's position with regard to acceptance of alteration of design from one manufacturer's model to another model of the same manufacturer, using parts obtained from such manufacturer. The altered machine would necessarily as completed have to be identical with machines available from the manufacturer in such terms as mentioned in your letter, i.e., center of gravity, strength of frames, braces, and all parts, etc., to justify your department in not rescinding registration of same, and we would assume the burden of proving such altered machine to be identical to machines available from the manufacturer would be upon the person applying for registration of same.

We hope the within and foregoing will be sufficient for your purposes.

HELGI JOHANNESON

Attorney General