

**OPINION
72-295**

December 1, 1972 (OPINION)

Mr. Ralph M. Wood
North Dakota Highway Patrol
State Capitol
Bismarck, ND

Dear Mr. Wood:

This is in reply to your letter of 21 November 1972 requesting that this office render an opinion regarding the application of section 29-05-31 of the North Dakota Century Code and the use of the uniform traffic ticket with respect to offenses occurring under chapter 49-18 of the North Dakota Century Code.

You state further that you specifically wish to know whether or not the uniform traffic ticket can be used by North Dakota highway patrolmen under said chapter 49-18.

As you are undoubtedly aware, chapter 49-18 of the North Dakota Century Code is entitled "Motor Carriers," and involves basically regulation of "common carriers", "contract carriers" and similar public utility facilities operating by means of "motor vehicles" upon the public highways of the state.

As you are also aware, section 29-05-31 of the North Dakota Century Code prescribes a form of "uniform traffic complaint and summons" stated in said section 29-05-31 as usable "in cases involving violations of statutes or ordinances relating to the operation or use of motor vehicles."

We would necessarily assume that the offenses to which you refer under said chapter 49-18 would necessarily constitute "cases involving violations of statutes or ordinances relating to the operation or use of motor vehicles." On such basis, we would necessarily conclude that such form of uniform traffic ticket could be "use" by North Dakota highway patrolmen under chapter 49-18. However, we believe further comment is appropriate as to both the extent of such "use" and possibly the desirability of such use.

At the outset, we should mention that the "form" prescribed in said section 29-05-31, and the material a criminal "complaint must state" as specified in section 29-05-01 of the North Dakota Century Code are quite similar. Both statutes give a quite excellent outline of the material appropriate to constitute a valid criminal complaint, the section 29-05-31 "form" being a bit more detailed as to specific matters, appropriate to making the charge, and the section 29-05-01 provisions stating the requirements in more general terms.

The requisites for further proceedings before a magistrate normally complied with by the criminal criminal complaint are essentially constitutional rather than statutory however. (See in this regard State v. Erdman 170 N.W.2d. 872) We would assume that in the usual instance a complete "filling out" of the form specified in said

section 29-05-31 would create a valid criminal complaint, fulfilling the basic constitutional prerequisites; though we would not suggest that it would not be possible to put material in such form on the blanks provided that would not be sufficient to complete a constitutionally valid criminal complaint.

The unique feature of said section 29-05-31, however, is the "Promise to Appear" as shown in the last paragraph thereof. We might note also that language of the title, first paragraph and second to the last paragraph of said section 29-05-31 indicate same to also be a "summons" as well as a complaint.

While, as indicated, said section 29-05-31 indicates that the form therein provided is usable in cases involving violations of statutes or ordinances relating to the operation or use of motor vehicles, and while the form provided contains both "summons" and "promise to appear" forms, we find no further specification of the utilization of such "summons" and "promise to appear" forms in chapter 29-05, with the exception of the provisions thereof as to issuance of summons to corporate entities.

Sections 39-07-07 and 39-07-08 of the 1971 Supplement to the North Dakota Century Code are, however, quite specific in this regard. Those sections refer to violations of the provisions of chapters 39-08 through 39-13, 39-18 and 39-21 of the North Dakota Century Code and permit in those instances issuance of a summons "or otherwise notify him in writing to appear" and provide that: "Upon the receipt from the person halted of a written promise to appear at the time and place mentioned in the summons or notice, such officer shall release him from custody." There is no similar provision with regard to violations of chapter 49-18 of the North Dakota Century Code, as amended to date, on which basis we must conclude that the highway patrolman is not permitted to issue a "summons" or "release him from custody" where the "arrest" or "halting" is made for a violation of said chapter 49-18.

On such basis, where an arrest is made without a warrant for a violation of one or more of the provisions of chapter 49-18 of the North Dakota Century Code the arresting officer would be governed by sections 29-05-20 and 29-06-25 of the North Dakota Century Code which provide:

"29-05-20. DELAY AFTER ARREST PROHIBITED - ATTORNEY. The accused in all cases must be taken before a magistrate without unnecessary delay, and any attorney at law entitled to practice in the courts of record of this state, at his request, may visit such person after his arrest."

"29-06-25. PROCEDURE AGAINST PERSON ARRESTED WITHOUT WARRANT. When an arrest is made by a peace officer or a private person without a warrant, the person arrested without unnecessary delay must be taken:

1. Before the nearest or most accessible magistrate in the county where the arrest is made; or
2. If there is no magistrate in said county qualified to

act, then before the nearest or most accessible magistrate authorized to act for the county where the arrest is made.

A complaint stating the charge against the person arrested must be made before such magistrate, as provided in section 29-05-04."

In conclusion, we must thus state that the complaint form portion of section 29-05, when properly filled out, could be used by North Dakota highway patrolmen for violations of chapter 49-18 as the basic criminal complaint either as the complaint made after an arrest without a warrant or as the foundation for the issuance of a warrant and subsequent arrest pursuant thereto. WE would assume attempts to utilize the "summons" or "promise to appear" portions of the statutory form might result in quite a bit of confusion. On the other hand, while there is no requirement than an officer or other complaining witness notify a defendant of what he intends to put in a criminal complaint, when the officer intends to make a criminal complaint, or when the officer believes a hearing can be scheduled on a complaint the officer intends to make, and while giving such information might be considered strategically unsound there is no statute prohibiting giving such information, and same could in proper cases be quite convenient for both the officer and the defendant. We should mention, however, that while, as indicated, the complaint portion of the form prescribed in said section 39-05-31, when properly filled out, may fulfill the constitutional requirements and actually comply with the provisions of section 29-05-01 of the North Dakota Century Code, the actual governing statute (as to other procedures) would be section 29-05-01, on which basis it might in particular cases be more convenient to utilize the forms customarily used by the local state's attorney and magistrate under that statute.

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

Sincerely yours,

Helgi Johanneson

Attorney General