

**OPINION
73-448**

February 2, 1973 (OPINION)

Mr. Walter R. Hjelle
Commissioner
North Dakota Highway Department
Capitol Grounds
Bismarck, North Dakota 58501

Dear Mr. Hjelle:

This is in response to your letter in which you state the following:

"One of the provisions of Section 39-06-37, N.D.C.C., states:

'If any person fails to return to the commissioner any license or permit which has been cancelled, suspended, or revoked, the commissioner shall direct any highway patrolman or peace officer to secure possession thereof and return the same to the commissioner.'

'In the attached letter, Colonel Wood proposes to make a charge of \$10 per hour for rendering such service.

'I would request that you issue your Opinion as to the validity of such a charge. In addition, and in view of the fact that the appropriation for the State Highway Patrol is made from the State Highway Fund, would not any such revenue to the State Highway Patrol be necessarily deposited with the State Treasurer and credited to the State Highway Fund?'

Neither your letter nor the letter of Ralph Wood explains the grounds upon which a fee of \$10.00 per hour would be charged, nor does his letter to you or your letter make reference to any statutory authority for the charging of a fee.

It is a basic undisputed principle of law that all officers and agents of the government and all offices, bureaus, commissions or departments have only such authority as is granted to them by law or necessarily implied from such grant. We have been unable to find any authority for the State Highway Patrol to charge any fee in connection with the duty or responsibilities imposed upon them.

In a number of instances where a duty is imposed upon an officer, for example, the sheriff, the Legislature has in certain matters authorized the collection of a fee for such services. In such instances, the fee is regulated by the Legislature.

We are also aware that in numerous instances existing offices have been charged with additional responsibilities and duties without any additional appropriation or authority to collect a fee or charge a fee for such services.

If the Legislature had wanted the Highway Patrol or peace officer to make a charge for taking into his possession the license as provided

for in Section 39-06-37, it could have provided so and stated the amount of charge that could be made.

In the absence of any specific statutory authority granting the Highway Patrol the power to charge a fee to perform the services outlined in Section 39-06-37, it is our opinion that the fee of \$10.00 per hour or any other fee may not be charged to perform such service.

Sincerely yours,

ALLEN I. OLSON

Attorney General