

**OPINION
73-492**

August 28, 1973 (OPINION)

Mr. Maurice E. Cook
State's Attorney
Bowman County
Bowman, ND 58623

Dear Mr. Cook:

Your letter of August 17, 1973, to honorable C. H. Strand, Bowman County Justice, Bowman, North Dakota, has been noted here, and we direct our response to your opinion upon your request.

For reasons hereinafter stated, we do not agree with your conclusion that the provision providing for Promise to Appear in the Uniform Traffic Complain and Summons have apparently been superseded by chapter 301, 1973 Session Laws, Now Chapter 39-06.1 North Dakota Century Code. A reading of the headnote for chapter 301, 1973 Session Laws, discloses that section 49-07-08 was not repealed nor reenacted. However, sections 39-07-09 and 39-07-11 were definitely amended and reenacted. This would leave intact the language of section 39-07-08 . . . "Any person refusing to give such written promise to appear shall be taken immediately by the halting officer before the nearest or most accessible magistrate. . . .". It would thus appear to us that when the legislature reenacted section 39-07-09, it in effect bolstered and reaffirmed section 29-07-08, which states with definite clarity and certainty what to do with a person who refuses to sign a promise to appear. Thus, the legislative intent seems to have been classification of offenses for disposition rather than to abolish "arresting" or "halting" powers of law enforcement officers (section 1, chapter 301, 1973 Session Laws), codified as 39-06.1-01, subsection 1, in part. It is true that section 39-06.1-02 cited in your opinion gives that person the status of being charged with a noncriminal offense and provides him with those certain options of paying the statutory fee for the violation, or if he has posted bond he may forfeit same by not appearing at the designated time. However, this section is silent in the event that such person cited for such a noncriminal offense refuses to sign a promise to appear.

For the foregoing reasons, it is our opinion that chapter 39-06.1 of the North Dakota Century Code neither abrogated nor repealed prior statutory machinery providing for release of a person charged with a traffic offense, either criminal or noncriminal, on that person's written promise to appear, with the exceptions previously contained in section 39-07-09 and now enlarged under section 39-06.1-05.

Our opinion does not concern itself with any constitutional questions that may arise as a result of the classification of traffic offenses by the legislature into criminal and noncriminal categories. However, we are bound to interpret this law as well as we can and be in harmony with the apparent intent of the legislature. Please feel free to maintain further communication with us especially if you should have case law or other authority which would support your

original proposition.

Sincerely yours,

Allen I. Olson

Attorney General