

**OPINION
74-189**

July 11, 1974 (OPINION)

Mr. Gerald Rustad
Assistant State's Attorney
Williams County
P. O. Box 476

Williston, ND 58801

Dear Mr. Rustad:

This is in response to your letter in which you asked for an opinion whether or not a jury trial may be demanded for a noncriminal traffic violation at the initial disposition or hearing.

Chapter 39-06 of the North Dakota Century Code was enacted by Chapter 301 of the 1973 Session. Laws for the purpose of making certain traffic violations noncriminal and for the further purpose of providing for an administrative disposition of such violations.

Section 39-06.1-02 of the North Dakota Century Code provides that all traffic violations except those cited in 39-06.1-05 are deemed noncriminal. It also sets forth the procedure to be followed and manner of disposition of the noncriminal traffic offenses. None of these procedures involving an administrative disposition or a hearing imply the use of a jury.

Significantly no reference is made for a trial by jury except in Subsection 4a of Section 39-06.1-03 of the North Dakota Century Code where an appeal is taken in which a trial anew is had.

The right to a trial by jury is guaranteed in Section 7 of the North Dakota Constitution. We believe that the legislature was of the thought that such right is preserved by granting a trial by jury on appeal when such trial on appeal is anew. A similar concept is employed with references to violations of city ordinances in section 40-18-05 of the North Dakota Century Code which permits a trial anew by a jury on an appeal from an adverse verdict but does not provide for a trial by jury at the initial hearing before a municipal judge.

In setting upon these procedures the legislature was mindful of the constitutional right to the trial by jury and was satisfied that these procedures preserve such right and at the same time afforded due process to the individuals concerned.

It is therefore our opinion that under the provisions of chapter 39-06.1 of the North Dakota Century Code a trial by jury is not authorized in a noncriminal traffic violation at the initial hearing or at the administrative disposition but is available at a trial anew on an appeal from an adverse verdict, if demanded. Even on an appeal a trial by jury is not automatic. The individual party must demand a trial by jury on appeal.

Sincerely yours,

ALLEN I. OLSON

Attorney General