

**OPINION
75-126**

September 16, 1975 (OPINION)

Mr. Tom M. Beyer
Billings County State's Attorney
Billings County Courthouse
Medora, ND 58645

Dear Mr. Beyer:

This is in response to your letter of 9 September 1975 with regard to statutory penalty provisions as to motorcycle headgear.

You call to our attention the fact that Section 39-10.2-06 of the 1975 Supplement to the North Dakota Century Code does not contain a penalty clause and suggest that on such basis "violations" of this statute could not be, or certainly should not be, prosecuted by the office of the state's attorney.

This state's former motorcycle helmet law, Section 39-21-48 of the North Dakota Century Code (punishable as a misdemeanor under Sections 12-17-27 and 12-06-14 of the North Dakota Century Code, which constituted a kind of "catchall" type statute--see State v. Odegaard 165 N.W.2d. 677) was repealed by Chapter 348 of the 1975 Session Laws. Sections 12-17-27 and 12-06-14 of the North Dakota Century Code were repealed by Chapter 116, 1973 Session Laws. We should probably mention also the adoption of Chapter 301 of the 1973 Session Laws making most minor traffic offenses "noncriminal" and imposing statutory fees and assigning of "points" against the operator's license of persons violating such noncriminal prohibitions.

Section 14 of Chapter 348 of the 1975 Session Laws did adopt "Chapter 39-10.2 Motorcycles" of the 1975 Supplement to the North Dakota Century Code which does contain Section 39-10.2-06, which does provide:

"39-10.2-06. EQUIPMENT FOR MOTORCYCLE RIDERS.

1. No person shall operate or ride upon a motorcycle unless he is wearing protective headgear which complies with standards established by the motor vehicle department, except when participating in a lawful parade.
2. This section shall not apply to persons riding within an enclosed cab or on a golf cart."

On such basis we must conclude that North Dakota still does have a motorcycle helmet law. However as you may note, no criminal penalty, statutory fee, or assignment of points is made by the above-quoted 39-10.2-06 of the 1975 Supplement to the North Dakota Century Code. The general penalty for violations of said "Chapter 39-10.2 Motorcycles" appears to be adopted in Section 39-10.2-07 thereof in the following language:

"39-10.2-07. OTHER APPLICABLE LAW. All of the provisions of

chapter 39-06.1 pertaining to the disposition of traffic offenses shall apply to this chapter and sections 39-10.2-02 through 39-10.2-04 shall be considered moving violations within the definition in section 39-06.1-09."

Thus a violation of Section 39-10.2-06 is not to be considered a "moving violation" within the provisions of Section 39-06.1-09 (and does not otherwise fall under the definition of "moving violation" in said Section 39-06.1-09, nor does it fall under the definition of "nonmoving violation" contained in Section 39-06.1-08. No statutory fee is therefore imposed for same pursuant to Section 39-06.1-06 nor are any "points" assigned in the listing contained in Section 39-06.1-10. In view of the general changeover from criminal penalties to "statutory fees" for motor vehicle offenses, it is perhaps unnecessary to consider any "criminal" aspects of the offense; however we might comment generally that as heretofore noted, the general catchall provisions of Section 12-17-27 and 12-06-14 have been repealed, and the new "criminal code" is designed to be, and is, much more specific than the old criminal statutes.

On such basis we must conclude that while violation of the quoted Section 39-10.2-06 may be a contributing factor in determining civil liability as there is no longer a criminal penalty, statutory fee, or assignment of points for violation of the motorcycle helmet law, there is no conceivable objective in a state's attorney or other person prosecuting a violation of Section 39-10.2-06, this state's motorcycle helmet law. As suggested in your letter, violations of Section 39-10.2-06 of the North Dakota Century Code, the motorcycle helmet law, cannot be prosecuted by the office of the state's attorney.

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

Sincerely,

ALLEN I. OLSON

Attorney General