

**OPINION  
76-128**

November 23, 1976 (OPINION)

Mr. Donavin L. Grenz

Emmons County State's Attorney

Emmons County Courthouse

Linton, North Dakota 58552

Dear Mr. Grenz:

To provide a clear record of our answers to your questions, each part of your letter will be quoted and an answer given:

(1) Hypothetically assuming that an individual is driving a motor vehicle which he does not own, while in the course of his employment, that the vehicle was registered and licensed outside of the State of North Dakota, and that the temporary North Dakota registration has expired, could the driver of said vehicle be properly charged and convicted for violation of either subsection 39-04-18(e) or section 39-04-37 N.D.C.C.?

Answer: Yes. Both the owner and the operator could be charged under either or both of the above provisions of the code. The operator, gainfully employed or stationed in this state, is subject to Subsection 39-04-18(2)(e) and also the penalty provision of Subsection 39-04-18(3).

(2) Section 39-04-18 N.D.C.C. seems to inversely state which motor vehicles are not exempt from registration fees and it would seem that if temporary registration issued to nonexempt vehicles would expire that the owner of said vehicle would be in violation of the law and not the individual operating the same.

As stated in the answer above, our opinion is that the statute is broad enough to include both the owner and the operator.

(3) Only subsection 1 of 39-04-37 N.D.C.C. would seem to be applicable to the operator under the aforementioned hypothetical facts, but said subsection would not seem to apply in cases where temporary in-state registration of out-of-state vehicles had simply expired. If aforementioned subsection 1 would apply to the operator under the circumstances hereinbefore set forth, would it not be more proper to charge the owner rather than the operator for said violation?

Answer:

"39-04-37. VIOLATIONS OF REGISTRATION PROVISIONS. - It shall be unlawful for any person to commit any of the following acts:

1. To operate, or for the owner thereof knowing to permit

anyone to operate, upon a highway any motor vehicle the registration of which has been canceled or revoked, or which is not registered, . . ." (emphasis ours)

When the temporary registration expires, the vehicle is no longer registered and therefore both the operator and the owner become liable. While you may have a good argument under some equity principle to hold the owner solely liable the facts usually indicate the jurisdiction of a nonresident, nonoperating owner may be difficult to obtain whereas the operator is within the state and its jurisdiction.

(4) One final question. If either subsection 39-04-18 (e) or subsection 39-04-37 (1) could apply under the hypothetical facts set forth, would either be so vague in regard to their application to the operator of a vehicle as to be constitutionally void for vagueness?

Answer: Law enforcement personnel who have been enforcing the motor vehicle registration statutes apparently have not had any problems with courts on the basis of challenge as you suggest. A careful reading of both of the statutes seems to indicate a clear intent on the part of the Legislature to make both the owner and operator subject to the penalty provisions of Chapter 39-04.

Sincerely yours,

ALLEN I. OLSON

Attorney General