

**OPINION
78-80**

June 29, 1978 (OPINION)

Charles E. Crane, Esquire
Hettinger County State's Attorney
105 East Third Street
Mott, ND 58646

Dear Mr. Crane:

This is in response to your letter of June 5, 1978, regarding the interpretation and construction of certain sections of Title 39 of the North Dakota Century Code.

You first cite subsection 2 of section 39-01-01, regarding the definition of Class A Authorized Emergency Vehicles. Next, you cite North Dakota Century Code section 39-10-03, which section exempts the driver of a Class A Authorized Emergency Vehicle from certain rules of the road. You then cite section 39-21-18 which requires every authorized emergency vehicle to be equipped with a siren. Finally, you note that there appears to be a penalty provided in section 39-21-46 for the lack of any equipment required by chapter 39-21. You then ask the following three questions:

1. What are the consequences of a police or sheriff's motor vehicle not being equipped with a siren, or other sound paraphernalia, but only with a flashing red light? Is such officer subject to the penalty fines set forth in Section 39-21-46, if he does not have a siren which apparently is such sum of \$20.00.
2. Does a police or sheriff's vehicle not being equipped with a sound device lose its classification as a Class A Authorized Emergency Vehicle, and does the officer thereby lose the special privileges granted to him under 39-10-03? I would think not as he is still operating a Class A Authorized Emergency Vehicle pursuant to definitions under 39-01-01 and as such Authorized Emergency Vehicle he is in pursuit of or apprehension of a violator under 39-10-03 Sub-paragraph (2) (a).
3. This situation, namely a police officer operating a motor vehicle without siren or sound equipment gives rise to another question: Will the officer's lack of proper equipment nullify his citation or arrest of a traffic violator? Also again I would think not.

As you note, a Class A Authorized Emergency Vehicle, for the purposes of Title 39 ("Motor Vehicles") includes the following:

- 2) Vehicles when operated by or under the control of a police officer having authority to enforce the provisions of this Title or by a salaried employee of any municipal police department within the municipality or by any sheriff or deputy sheriff not to include special deputy sheriffs, or

by the warden of the state penitentiary and his authorized agents;

This definition is the only standard provided anywhere in Title 39 which the Legislative Assembly has established to determine what constitutes a Class A Authorized Emergency Vehicle for the purposes of municipal police and county sheriff's departments. Thus, a vehicle complying with this language is by definition a Class A Authorized Emergency Vehicle. Section 39-10-03 sets forth certain actions which the driver of such a vehicle may take under certain conditions, which would otherwise be in violation of the rules of the road. Subsections 1 and 2 of this section provides as follows:

39-10-03. Class A authorized emergency vehicles. 1. The driver of a class A authorized emergency vehicle may:

- a. Park or stand, irrespective of the provisions of this chapter;
 - b. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
 - c. Exceed the speed limit so long as he does not endanger life or property;
 - d. Disregard regulations governing direction of movement or turning in specified directions.
2. The exceptions herein granted to a class A authorized emergency vehicle shall apply only:
- a. When the authorized emergency vehicle is in pursuit of or apprehension of a violator or a suspected violator requiring the use of these exemptions;
 - b. When the class A authorized emergency vehicle is being operated in response to a reported emergency involving a possible personal injury, death or damage to property, and when giving audible signal by siren or when giving adequate warning by use of a flashing red light which is visible under normal atmospheric conditions for at least five hundred feet;
 - c. In any instance when the head of a law enforcement agency deems advisable within the area of his jurisdiction for the protection of person and property and when giving audible signal by siren or when giving adequate warning by use of a flashing red light which is visible under normal atmospheric conditions for at least five hundred feet.

We point out that subsection 1 applies to the driver of a Class A Authorized Emergency Vehicle, thus relying upon the definition of

such a vehicle contained in section 39-01-01. Subsection 2 of section 39-10-03 sets forth the conditions under which the rules of the road may be disregarded, the in manner set forth in subsection 1. These two subsections are perfectly consistent and must be read together in order to authorize the driver of a Class A Authorized Emergency Vehicle to undertake actions which would otherwise be in violation of the state's traffic laws. We draw your attention to the fact that section 39-10-03 concerns and affects only the authority of the driver of a Class A Authorized Emergency Vehicle to disregard certain rules of the road under specified conditions. It does not in any way purport to affect any other power or authority incident to the office of the police or the sheriff, such as the power of arrest.

The equipment required to be used on or affixed to authorized emergency vehicles is established by section 39-21-18, which section provides:

- 39-21-18. Audible and visual signals on vehicles. 1. Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped with a siren, exhaust whistle, or bell capable of causing a minimum sound intensity level of eight-five decibels, such siren or signal shall be mounted outside of the vehicle or in front of the radiator.
2. Every school bus, except small vehicles such as automobiles, station wagons, suburbans, and van type vehicles having a seating capacity of up to and including sixteen pupils, and every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying to the front to alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level, and these lights shall have sufficient intensity to be visible at five hundred feet in normal sunlight.
 3. A police vehicle when used as an authorized emergency vehicle may, but need not, be equipped with alternately flashing red lights specified herein and a vehicle designated for the use of the adjutant general or the assistant adjutant general may, but need not, be equipped with a siren, exhaust whistle, or bell specified herein.
 4. The use of the signal equipment described herein shall impose upon drivers of other vehicles the obligation to yield right of way and stop as prescribed in sections 39-10-26 and 39-10-46.

We note, parenthetically, that when read together, subsections 2 and 3 require the display of alternately flashing red lights to both the front and the rear of every authorized emergency vehicle except police vehicles, for which alternately flashing red lights are not mandatory but rather permissive. Thus, we believe that you are correct in your assumption that section 39-21-18 makes it mandatory

for a police vehicle to be equipped with a siren, exhaust whistle, or bell but that it need not necessarily be equipped with flashing red lights.

Lastly, a penalty is established for the lack of required equipment in section 39-21-46 in the following manner:

39-21-46. Scope and effect of regulations - Penalty. 1. It is unlawful for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which he knows to be in such unsafe condition as to endanger any person, or which he knows does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter, or which he knows is equipped in any manner in violation of this chapter, or for any person to do any act forbidden or fail to perform any act required under this chapter. Any person who violates any of the provisions of section 39-21-08, 39-21-09, 39-21-10, or 39-21-14 shall be assessed a fee of ten dollars. Any person who, in violation of the provisions of this chapter, drives, or any owner who causes or knowingly permits to be driven upon a highway, any vehicle or combination of vehicles which he knows is unsafe or improperly equipped shall be assessed a fee of twenty dollars.

2. Nothing contained in this chapter shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter.

3. The provisions of this chapter with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers or farm tractors except as herein made applicable. (Emphasis added.)

In response to your first question concerning the consequences of the failure of a police vehicle to be equipped as provided in section 39-21-18, it is clear that the provisions of subsection 1 of that section are mandatory, as the legislature chose the language "shall . . . be equipped". This is the same mandatory language used in connection with the equipment required on school buses under subsection 2, and all other authorized emergency vehicles under subsection 1. Police vehicles, by reason of the inclusion with the meaning of "Class A Authorized Emergency Vehicles", as defined in section 39-01-01 and by reason of the use of the words "every" authorized emergency vehicle, thus stand in no different relationship to the mandatory requirements of section 39-21-18 than any other vehicle included therein. Section 39-21-46 then goes on to provide that it is "unlawful for any person" or any owner to allow "any vehicle" to be driven without the equipment required by chapter 39-21, which certainly includes the warning devices made mandatory by section 39-21-18. By the use of the broad language which the Legislative Assembly has chosen, the omission of required equipment from police vehicles has become "unlawful". While such a result may seem to be an anomaly, we note that the Legislative Assembly has specifically provided an exemption of the application of chapter

39-21, set out above. Had an execution to any portion of the chapter, including the penalties provided in section 39-21-46, been intended to apply to police vehicles, we believe that the Legislative Assembly would have so provided as in the case of farm vehicles. Thus, under the language of section 39-21-46, police vehicles stand in the same relationship to the prohibitions contained therein as any other authorized emergency vehicle (e.g., ambulances) or school bus operating without the required equipment.

If section 39-21-46 and the penalty included therein is to be found not to apply to police vehicles, it must be because of the status of ownership of the vehicle itself; because it is owned and operated by the very departments and persons charged with enforcement of the laws otherwise violated. We are not aware of any statute, regulation, principal of law, or other authority which would have such an effect. The criminal laws of this state apply equally to all persons, whether those laws be the laws of theft or the rules of the road, unless an exemption has been specifically granted by law. Consequently, we can perceive no reason why section 39-21-46 and the penalty provided therein, may not be applied against the owner or operator of a police vehicle in accordance with that section.

Aside from the simple language and scheme of the statute itself, we also believe that the logic of the public purpose for the required warning devices also supports this conclusion. One of the primary purposes of these devices is to help insure the safety of police officers or other emergency personnel, and the safety of the public. To allow an emergency vehicle the extraordinary right of way privileges granted by subsection 1 of section 39-10-03 but not to require the use of the warning device would be to invite catastrophe. The siren or other device is more likely to be used, whether or not the right of way is taken, and the ultimate policy of public safety thereby enhanced, if the device is required to be equipped under penalty of law.

The effect of nonequipment of a police vehicle, or other Class A Authorized Emergency Vehicle, with the required devices is clear from the reading of section 39-10-03. Under subsection 2 of that section, the exceptions to the rules of the road apply only in the 3 instances given. If use of warning devices is required as an intrinsic part of the exception, the exception is clearly not operative for any vehicle not so equipped, regardless of the fact that the vehicle otherwise complies with the definition of a Class A Authorized Emergency Vehicle contained in section 39-01-01. If use of the warning device is required but not, in fact, used, the vehicle simply has the status of a Class A Authorized Emergency Vehicle which must comply with the ordinary rules of the road. In examining subdivisions a, b and c of subsection 2 of section 39-10-03, set out above, we believe that actual use of the warning devices (siren or flashing red lights) is required in the instances of subdivisions b and c in order for the exception to the rules of the road to apply. Thus, a vehicle not so equipped is excluded by sheer impossibility from the exemptions found in subsection 1. Where use of the warning devices is not required for exemption, as in subdivision a, the lack of such equipment will not prevent the application of the exemption.

In response to your third question, whether the lack of required

warning devices will by some manner nullify the citation or arrest of a traffic violator, we note that the only effect of the lack of and therefore use of required warning devices under section 39-10-03 is to effect any other power of the office of sheriff or the police, such as the power of arrest, defense of others, etc. The power of arrest itself does not attach to an officer of the law because of the equipment of certain warning devices on a vehicle, but because of the status of the officer himself as granted by law. An arrest may, of course, be nullified by the failure of an officer to comply with certain requirements of the laws of arrest, but such requirements are derived from constitutional protections and do not concern arrests, which, although otherwise valid, occur subsequent to possible right of way violations by an arresting officer.

In summary and in direct response to your questions, we believe that the penalties specified in section 39-21-46 are applicable to Class A Authorized Emergency Vehicles, including police vehicles; that a Class A Authorized Emergency Vehicle may, under the conditions noted above, lose the protection of exemptions granted by subsection 1 of section 39-10-03; and that a police officer operating a vehicle in violation of those exemptions is not deprived of the power of arrest, otherwise granted by law.

We trust that the foregoing discussion will be of assistance to you.

Sincerely,

ALLEN I. OLSON

Attorney General