

**OPINION
79-108**

January 16, 1979 (OPINION)

Mr. Edward J. Klecker
Director of Institutions
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Klecker:

This is in response to your letter of October 19, 1978, in which you state:

I hereby request your formal opinion on my legal powers as Director of Institutions in regulating vehicle traffic on the capitol grounds; and if the State Highway Patrol has jurisdiction to provide law enforcement assistance in the enforcement of capitol ground traffic regulations and how any violators are to be adjudicated.

Your first question deals with the authority of the Director of Institutions to regulate vehicular traffic on the Capitol grounds. North Dakota Century Code, Section 54-21-18, dealing with the duties of the Director of Institutions, states in part:

"The director shall have charge and control of the executive mansion, the capitol, and the park and public grounds connected therewith."

That section does not specifically give the Director of Institutions any authority to regulate highways.

It seems apparent that the area in question is a highway as defined by state law. North Dakota Century Code Section 39-01-01, subsection 21, states:

"Highway shall mean the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular traffic . . ."

Title 39 of the North Dakota Century Code sets forth general guidelines for the regulation of all highways within the state and specifically authorizes the Highway Commissioner to regulate state highways and local authorities to regulate highways under their jurisdiction, within the guidelines set forth. North Dakota Century Code Section 24-01-02 gives the Highway Commissioner "complete authority to designate, locate, create, and determine what roads, highways, and streets shall constitute the state highway system, subject however, to such conditions, requirements, and mileage limits as provided by law." Section 39-01-01, subsection 27, defines local authorities to include "every county, municipal, and other local board or body having authority to adopt local police regulations under the constitution and laws of this state." Clearly, The Director of Institutions does not fall within the definition of local

authorities. Nowhere in Title 39 is the Director of Institutions given any authority to regulate vehicular traffic on any highway within the state. Section 54-21-18, while very broad in nature, cannot be construed to give the Director of Institutions that authority specifically given to the State Highway Commissioner and local authorities.

Your second question is whether the Highway Patrol have jurisdiction to provide law enforcement assistance in the enforcement of Capitol ground traffic regulations.

North Dakota Century Code Section 39-03-09, subsections 11 and 12, provide that members of the highway patrol have the power:

1. Of a peace officer for the purpose of enforcing the provisions of this code at all state charitable and penal institutions and on the state capitol grounds; and
2. To exercise general police powers over all violations of law committed in their presence upon any highway and within the highway right of way or when in pursuit of any actual or suspected law violator.

Your final question relates to how violators of Capitol ground traffic regulations are to be adjudicated. In answer to that query, we have set forth the following applicable sections of state law:

39-07-06. GENERAL PENALTY FOR VIOLATION OF TITLE. - Any person violating any of the provisions of this title for which another criminal penalty is not provided specifically shall be guilty of an infraction. As used in this section, the phrase "another criminal penalty" includes provision for payment of a fixed fee for violating another section in this title, but does not include any other administrative sanction which may be imposed.

39-07-07. HALTING PERSON FOR VIOLATING TRAFFIC REGULATIONS - DUTY OF OFFICER HALTING. - Whenever any person is halted for the violation of any of the provisions of chapters 39-01 through 39-13, 39-18, 39-21, and 39-24, or of equivalent city ordinances, the officer halting such person, except as otherwise provided in section 39-07-09, may:

1. Take and name and address of such person;
2. Take the license number of his motor vehicle; and
3. Issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice.

39-07-08. HEARING - TIME - PROMISE OF DEFENDANT TO APPEAR - FAILURE TO APPEAR - PENALTY. - The time to be specified in the summons or notice provided for in section 39-07-07 shall be within ten days after the issuance of such summons or notice unless the person halted shall demand an earlier hearing, and, if the person halted desires, he may have the right, at a convenient hour, to an immediate hearing or to a hearing within

twenty-four hours. Such hearing shall be before a magistrate of the city or county in which the offense was committed. Upon the receipt from the person halted of a written promise to appear at the time and place mentioned in the summons or notice, such officer shall release him from custody. 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, or to such other place or before such other person as may be provided by a statute or ordinance authorizing the giving of bail. Any person willfully violating his written promise to appear shall be guilty of a class B misdemeanor, regardless of the disposition of the charge upon which he originally was halted.

39-07-09. OFFENSES UNDER WHICH PERSON HALTED MAY NOT BE ENTITLED TO RELEASE UPON PROMISE TO APPEAR. - The provisions of section 39-07-07 shall not apply to a person if:

1. The halting officer shall have good reason to believe such person guilty of any felony or when such person is halted and charged with any of the offenses listed in section 39-06.1-05, except reckless driving; or
2. The halting officer, acting within his discretion, deems it inadvisable to release such person upon his promise to appear when halted and charged with either of the following offenses:
 - a. Reckless driving; or
 - b. Driving in excess of speed limitations established by the state or by local authorities in their respective jurisdictions.

The halting officer forthwith shall take any person not released upon his promise to appear before the nearest or most accessible magistrate.

We hope this will sufficiently answer your questions.

Sincerely,

ALLEN I. OLSON

Attorney General