

**OPINION
79-150**

April 20, 1979 (OPINION)

Colonel James D. Martin, Superintendent
North Dakota Highway Patrol
State Capitol
Bismarck, North Dakota 58505

Dear Colonel Martin:

This is in response to your letter of March 19, 1979, wherein you requested our opinion relative to the jurisdiction of highway patrol officers granted by several sections of the North Dakota Century Code.

After quoting from subsection 12 of Section 39-03-09 you ask: "Does this section permit highway patrol officers to make or attempt to make apprehensions of law violators for crimes committed in the officer's presence on private property?" You then set forth the provisions of Sections 29-06-03 and 29-06-04 and then you state:

Do these sections permit highway patrol officers to render assistance to city police and county sheriffs departments when they call for help to apprehend law violators on private property even though the highway patrol officers would be utilizing their issued department equipment?

It is our impression that case law currently in effect prohibits officers from making arrests as private citizens if they affect the arrest utilizing the "tools" of their office.

The relevant portion of Section 39-03-09 provides as follows:

39-03-09. POWERS OF HIGHWAY PATROL. - The superintendent and each member of the highway patrol, shall have the power:

. . .

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.

We believe that this subsection permits highway patrol officers to make arrests of law violators for crimes committed in the officer's presence on private property, as long as the officer has satisfied the terms of the statute requiring pursuit. As a matter of statutory construction, the language "or when in pursuit of any actual or suspected law violator" appears to be an extension of the authorization of general police powers granted upon "any highway and within the highway right of way". As the "pursuit extension" has not been limited by the statute to any highway, the highway right of way, or any other property owned by the state or a political subdivision of the state, we can see no reason for restricting the "pursuit extension" to exclude jurisdiction upon private property. We believe

that such a construction allowing jurisdiction upon private property when in pursuit is a logical construction, as we do not believe that the Legislative Assembly intended to grant a sanctuary upon private property to violators of the state's highway laws who are otherwise subject to arrest by highway patrol officers. Were this the case, a violator would only need to cross the line between the highway right of way and adjoining private property in order to obstruct an otherwise lawful arrest.

Moreover, the "pursuit extension" contained in subsection 12 does not appear to be limited only to a violator which may have committed a criminal act upon the highway or within the highway right of way and subsequently sought sanctuary upon private property. The phrase "all violations", when read in conjunction with the pursuit extension, would appear to grant the highway patrol officer jurisdiction over "all violations" committed upon private property as long as pursuit was being given at the time.

In regard to your second question, Sections 29-06-03 and 29-06-04 provide as follows:

29-06-03. OFFICER MAY SUMMON AID TO MAKE ARREST. - Any officer making an arrest may summon as many persons orally as he deems necessary to aid him therein.

29-06-04. PERSONS MUST AID IN MAKING ARREST. - Every person, when required, must aid an officer in the making of an arrest.

We believe that a highway patrol officer would have the authority to assist in an arrest made pursuant to these sections. These sections, however, are a codification of the common law power of the sheriff to call for the assistance of private citizens and may not be considered to give sheriffs or police chiefs the absolute power to call upon highway patrol officers in all situations. We would suggest that as superintendent of the Highway Patrol, you may desire to consider formulating a policy with regard to which requests for assistance Highway Patrol officers can honor without jeopardizing performance of their statutorily specified responsibility to police state highways and enforce state laws dealing with motor vehicles and motor vehicle operators. Whether or not the law in North Dakota is that a highway patrol officer would be prevented from making an arrest as a private citizen when using the "tools" of his office does not seem to be relevant under these sections, as long as the highway patrol officer is not himself the officer actually and formally making the arrest, but is only assisting therein.

It is hoped that the foregoing will be of assistance.

Sincerely,

ALLEN I. OLSON

Attorney General