

Office of the Attorney General
State of North Dakota

Opinion No. 82-1

Date Issued: January 12, 1982

Requested by: K. M. Knutson
City Prosecutor
Minot, North Dakota

QUESTION PRESENTED

Whether law enforcement officers may issue a uniform traffic complaint and summons to persons involved in motor vehicle accidents for a violation of municipal or state traffic laws where the violation did not occur in the presence of the officer.

ATTORNEY GENERAL'S OPINION

It is my opinion that a law enforcement officer may issue a uniform traffic complaint and summons to persons involved in motor vehicle accidents for a violation of municipal or state traffic laws where the violation did not occur in the presence of the officer.

ANALYSIS

Section 29-05-31 of the North Dakota Century Code allows police officers to issue a uniform complaint and summons in cases involving violations of statutes or ordinances relating to the operation of motor vehicles. Section 39-06.1-02, N.D.C.C., clearly states that traffic violations of state or municipal traffic laws or ordinances are non-criminal except for those offenses listed in Section 39-06.1-05, N.D.C.C. Section 39-06.1-03, N.D.C.C., states that persons cited for traffic violations, other than those listed in Section 39-06.1-05, N.D.C.C., and who wish to have a hearing, are entitled to an administrative hearing.

From these three sections of the North Dakota Century Code, it is apparent that the legislature intended that all violations of state and city traffic laws and ordinances, except those listed under Section 39-06.1-05, N.D.C.C., be initiated and processed on a non-criminal basis. To describe such matters as criminal and to apply criminal rules would defeat this legislative intent.

It is my opinion that the initiation and processing of violations of state and city traffic ordinances is an administrative procedure governed by Section 39-06.1-03, N.D.C.C. To initiate this administrative procedure, a law enforcement officer may issue a uniform traffic complaint and summons in any case involving violations of non-criminal state traffic statutes or city traffic ordinances. The only restriction on the officer's issuance of the

complaint and summons is that the offense must relate 'to the operation or use of motor vehicles.' The only cases where criminal rules of procedure, including arrest without a warrant, should be applied in cases involving motor vehicles are those situations specifically described in Section 39-06.1-05, N.D.C.C.

This opinion replaces and supersedes the opinion issued by this office dated March 19, 1980 and the letter written to Colonel James D. Martin dated April 23, 1980.

EFFECT

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

Robert O. Wefald
Attorney General