

Date Issued: June 14, 1983 (AGO 83-22)

Requested by: Duane R. Liffrig, State Highway Commissioner

I.

- QUESTIONS PRESENTED -

Whether a finding of guilt on a traffic offense on which the imposition of sentence has been suspended pursuant to section 12-53-13 of the North Dakota Century Code constitutes a conviction under section 39-06-30, N.D.C.C.

II.

Whether any suspension or revocation of driving privileges may be imposed as a result of notice of conviction received after the ten-day reporting period set out in section 39-07-11, N.D.C.C.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that a finding of guilt on a traffic offense on which the imposition of sentence is suspended pursuant to section 12-53-13, N.D.C.C., constitutes a conviction under section 39-06-30, N.D.C.C.

II.

It is my further opinion that a suspension or revocation of driving privileges may be imposed although the notice of conviction is received after the ten-day reporting period set out in section 39-07-11, N.D.C.C.

- ANALYSIS -

I.

In the disposition of a traffic offender upon a finding of guilt, a court which uses the phrase "deferred imposition of sentence" suspends the imposition of a sentence pursuant to the authority granted in section 12-53-13, N.D.C.C.

Where the imposition of the sentence was suspended there is no question but that a conviction has been obtained and that the magistrate rendering the decision must report that fact to the licensing authority within ten days following the judgment of conviction unless an appeal is pending. Section 39-07-11, N.D.C.C., states, in part, as follows:

39-07-11. MAGISTRATE TO KEEP RECORD OF CONVICTIONS OF TRAFFIC VIOLATIONS - RECORDS OF CONVICTION TO BE FORWARDED TO LICENSING AUTHORITY. . . . Subject to the filing of an appeal, a conviction shall include those instances when:

1. A sentence is imposed and suspended;
2. Imposition of a sentence is suspended under chapter 12-53; or
3. There is a forfeiture of bail or collateral deposited to secure a defendant's appearance in court and the forfeiture has not been vacated. (Emphasis supplied).

In *Thompson v. Thompson*, 78 N.W.2d. 395 (N.D. 1956), the North Dakota Supreme Court rejected the argument that the suspension of an imposition of sentence under chapter 12-53, N.D.C.C., results in the lack of a conviction during the period of suspension. The Court stated:

. . . The legislature must have intended that the conviction stands during the period of suspension of sentence and is subject to the same rules of finality as any other conviction.

78 N.W.2d. 395, 399. See also *Kosmatka v. Safety Responsibility Division*, 196 N.W.2d. 402 (N.D. 1972).

II.

Section 39-07-11, N.D.C.C., requires magistrates in this state to report within ten days to the licensing authority the names of those persons convicted of traffic violations. Section 39-06.1-10, N.D.C.C., instructs the licensing authority as to what action must be taken upon receipt of such information from the magistrates in this state. This statute states, in part, as follows:

39-06.1-10. ENTRIES AGAINST DRIVING RECORD - LICENSING AUTHORITY DUTIES - HEARINGS - DEMERIT SCHEDULE - SUSPENSION.

1. When a report of a conviction of a traffic offense, or admission or adjudication of a traffic violation is received by the licensing authority, the licensing authority shall proceed to enter the proper number of points on the licensee's driving record, unless the number of points assigned to the violation are two or less. . . .

The statutes do not provide any indication that the procedure outlined above should not be followed where the reports of a conviction are received after the ten-day reporting period

provided for in section 39-07-11, N.D.C.C. It is my opinion that the licensing authority should continue to process such convictions pursuant to section 39-06.1-10, N.D.C.C., without regard for the fact that the reports of convictions were not received within ten days following the judgment of conviction. If the Legislature desired to provide a special procedure to be followed in such instances, it could have done so.

This opinion is in line with Schmidt v. North Dakota State Highway Department, (South Central Judicial District, Civil No. 33219, January 5, 1983). In Schmidt, the District Court ruled that a conviction not forwarded to the highway commissioner until sixteen months after the judgment of conviction may form the basis for suspending the operator's driving privileges. There the District Court states as follows:

The highway commissioner should assess the petitioner's driving record as it would have been had the reports been received within the required ten-day period. If, in so doing, it should appear that at any time thereafter the petitioner's license would have been suspended, the commissioner may suspend it now. He may not, however, suspend the license for any greater period than he could have if the reports had been received as required by law. Schmidt supra, slip op. at 3.

- 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.

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