

Date Issued: January 31, 1984 (AGO 84-9)

Requested by: Randy A. Deede, Nelson County State's Attorney

- QUESTION PRESENTED -

Whether a mayor has the authority to issue a limited motor vehicle operator's license to a person whose North Dakota driver's license has been suspended.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a mayor does not have authority to issue a limited motor vehicle operator's license to a person whose North Dakota driver's license has been suspended.

- ANALYSIS -

Section 39-06-01 of the North Dakota Century Code, provides as follows:

39-06-01. OPERATORS MUST BE LICENSED - ADDITIONAL LICENSING PENALTY.

1. A person, unless expressly exempted in this section, may not drive any motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state unless the person has a valid license as an operator under the provisions of this chapter or a temporary operator's permit issued under chapter 39-20. A person may not receive an operator's license unless and until that person surrenders to the commissioner all valid operator's licenses in the person's possession issued to the person by any other jurisdiction. All surrendered licenses shall be returned by the commissioner to the issuing department together with information that the licensee is now licensed in a new jurisdiction. A person may not have more than one valid operator's license at any time.

2. Any person licensed as an operator hereunder may exercise the privilege thereby granted upon all streets and highways in this state and shall not be required to obtain any other license to exercise such privilege by any county, municipal or local board, or body having authority to adopt local police regulations, except that municipalities may license draymen, parcel delivery men, bus drivers, taxi drivers, porters, expressmen, watermen, and other pursuing like occupations, and the operation of taxicabs, as provided by subsection 27 of section 40-05-01.

Chapter 39-06, N.D.C.C., referred to in the above-quoted section, is the only chapter of North Dakota law which provides for the licensing of motor vehicle operators. That chapter grants exclusively to the North Dakota State Highway Commissioner the authority to issue those operators' licenses.

Section 39-01-01(22), N.D.C.C., defines highway as being 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 travel. Section 39-01-01(69), N.D.C.C., defines street as being the entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

It is therefore apparent that the driver's license issued pursuant to section 39-06-01, N.D.C.C., grants the privilege of operating motor vehicles in this state on all streets and highways, including streets within cities. Section 39-06-01(2), N.D.C.C., quoted above, provides that no municipality may require a person to obtain any other license to drive, except that cities may regulate the conduct of the business of deliverymen, taxi drivers, and others expressed in that section. This provision does not allow cities to issue drivers' licenses, but only allows them to regulate certain businesses. Section 39-06-38, N.D.C.C., provides:

39-06-38. NO OPERATION UNDER FOREIGN LICENSE DURING SUSPENSION OR REVOCATION IN THIS STATE. Any resident or nonresident whose operator's or chauffeur's license or right or privilege to operate a motor vehicle in this state has been suspended or revoked as provided in this title shall not operate a motor vehicle in this state under a license, permit, or registration certificate issued by any other jurisdiction or otherwise during such suspension or after such revocation until a new license is obtained when and as permitted under this title. (Emphasis supplied).

The underscored language in this section indicates clearly that if the State Highway Commissioner suspends or revokes a driver's license under Title 39, N.D.C.C., that the person shall not again drive in North Dakota until a new license is obtained under that title. This specifically excludes the issuance of a driver's license by a city mayor in North Dakota for operation within that city because only the State Highway Commissioner is given the authority under Title 39, N.D.C.C., for the issuance of drivers' licenses. Because mayors of cities in North Dakota are not possessed of the authority for the issuance of drivers' licenses, a mayor may not contravene the authority of the State Highway Commissioner in the issuance and suspension, revocation, or cancellation of drivers' licenses in this state by issuing licenses for operation of motor vehicles within city boundaries.

- 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 questions presented are decided by the courts.

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