

Date Issued: April 4, 1984 (AGO 84-19)

Requested by: Margy Bonner
Williston Assistant City Attorney

- QUESTIONS PRESENTED -

I.

Whether following a conviction of driving under suspension, a person is subject to the mandatory sentencing provisions of section 39-06-42(2) of the North Dakota Century Code, where the suspension resulted from both alcohol and nonalcohol offenses although the alcohol offense actually triggered the suspension.

II.

Whether following a conviction of driving under suspension or revocation a person is subject to the mandatory sentencing provisions of section 39-06-42(2), N.D.C.C., where the illegal driving occurs after the revocation or period of suspension has expired but the person has not filed proof of financial responsibility or paid the statutory reinstatement fee.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that following a conviction of driving under suspension a person is subject to the mandatory sentencing provisions of section 39-06-42(2), N.D.C.C., where the suspension resulted from both alcohol and nonalcohol related offenses although the alcohol offense actually triggered the suspension.

II.

It is my further opinion that following a conviction of driving under suspension or revocation a person is subject to the mandatory sentencing provisions of section 39-06-42(2), N.D.C.C., where the illegal driving occurs after the revocation period of suspension has expired but the person has not filed proof of financial responsibility or paid the statutory reinstatement fee.

- ANALYSES -

I.

Where a person had nonalcohol related points assessed against their driving record under section 39-06.1-10, N.D.C.C., and that person was later convicted of violating section 39-08-01, N.D.C.C., or equivalent ordinance, points would have been assessed for that violation and a suspension of that person's driving privileges ordered. In such a situation,

it was the conviction of section 39-08-01, N.D.C.C., or equivalent ordinance, that has caused the suspension of the person's driver's license.

The provisions of section 39-06.1-10(3)(b)(5), N.D.C.C., currently provide for twenty-four points to be assessed for a violation of section 39-08-01, N.D.C.C. Those twenty-four points alone would require a ninety-one-day suspension of driving privileges. If the individual had additional points on record at the time of the conviction for violating section 39-08-01, N.D.C.C., or an equivalent ordinance, the term of the suspension would exceed ninety-one days. However, it is the violation of section 39-08-01, N.D.C.C., or an equivalent ordinance, which has actually caused or triggered the suspension in the circumstances cited. Therefore, the entire term of the suspension, even though it may exceed the ninety-one days provided solely for violating section 39-08-01, N.D.C.C., or equivalent ordinance, was the result of violating that statute.

Consequently, it is my opinion that the sentencing requirements of section 39-06-42(2), N.D.C.C., would apply to a charge of driving under suspension made at any time during the period of suspension.

II.

Where a person's driver's license has either been suspended or revoked for a violation of section 39-08-01, N.D.C.C., or equivalent ordinance, or section 39-06-31, N.D.C.C., or chapter 39-20, N.D.C.C., and the specific term of suspension or revocation provided by statute has been served, the person must complete the requirements for reinstatement of driving privileges which may include the initial filing of proof of financial responsibility or paying a reinstatement fee. Where a person has not completed the requirements for reinstatement of driving privileges in such a situation and is charged with driving under suspension or revocation during that time period, the cause of the suspension or revocation and the charge for driving under suspension or revocation are still related to a violation of section 39-08-01, N.D.C.C., or related to section 39-06-31, N.D.C.C., or chapter 39-20, N.D.C.C. In this case, the sentencing requirements of section 39-06-42(2), N.D.C.C., would apply to a conviction for such a violation.

Also, sections 39-06-35 and 39-06-36, N.D.C.C., require that the license remain under suspension or revocation until the reinstatement fee is paid and section 39-16.1-07, N.D.C.C., requires the license remain under suspension or revocation after an alcohol-related suspension or revocation, until proof of financial responsibility is given. If, however, the person has completed all of the requirements for reinstatement of driving privileges after a suspension or revocation under the above-noted circumstances, and then sometime after reinstatement of driving privileges allows the proof of financial responsibility on file with the highway commissioner to lapse, and is suspended for that lapse in maintenance of proof of financial responsibility, the cause of the suspension in that instance would be merely the failure to maintain proof of financial responsibility. Therefore, if there was a charge and conviction for driving under suspension after failing to maintain proof of financial responsibility, not failing to initially file it, the sentencing requirements of section 39-06-42(2), N.D.C.C., would not apply.

Section 1-02-01, N.D.C.C., requires that the code be construed liberally, with a view to effecting its objectives and to promoting justice. The 1983 amendments to section 36-06-42, N.D.C.C., on mandatory sentencing, combined with other amendments of Title 39, N.D.C.C., relating to consumption of alcoholic beverages and motor vehicle operation, make it clear that the legislative intent was to severely respond to alcohol violations. Therefore, this opinion effectuates the legislative purpose and promotes justice by recognizing that it was the alcohol violation that caused the suspension or revocation in the circumstances cited, and by providing that the sanctions available apply in those circumstances.

- EFFECT -

This opinion is issued pursuant to section 54-12-02, N.D.C.C. It governs the actions of public officials until such time as the questions presented have been the subject of a judicial decision.

Robert O. Wefald
Attorney General

Prepared by: Robert E. Lane
Assistant Attorney General