

Date Issued: May 30, 1984 (AGO 84-27)

Requested by: James N. Purdy
Dickey County State's Attorney

- QUESTION PRESENTED -

Whether the operator of a truck is legally obligated to stop his truck at a weigh station when directed to do so by an official highway sign.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the operator of a truck is legally obligated to stop his truck at a weigh station when directed to do so by an official highway sign.

- ANALYSIS -

Section 24-01-13 of the North Dakota Century Code vests in the highway commissioner general police powers with respect to the operation of certain types of motor vehicles and trailers. The statute provides as follows:

24-01-13. ENFORCEMENT OF HIGHWAY LAWS - VEHICLE SIZE AND WEIGHT CONTROLLED. The commissioner and each officer and inspector of the state highway department, designated by him, shall enforce the provisions of chapter 49-18, and shall have general police powers with respect to enforcement of all laws pertaining to the use of motor vehicles and trailers, other than passenger cars and motorcycles, upon the highways, roads and streets of this state and may:

1. Classify highways and enforce limitations as to weight and load of vehicles thereon as provided for under section 39-12-01.
2. Issue special written permits authorizing the operation of oversized or overweight vehicles as provided for under section 39-12-02.
3. Prohibit the operation, or may impose restrictions on vehicular use of highways during certain seasons of the year as provided for under section 39-12-03.

Section 24-01-13(3), N.D.C.C., specifically authorizes the use of the highway commissioner's police powers in the enforcement of weight restrictions on motor vehicles using the state highway system during certain times of the year.

Section 39-12-03, N.D.C.C., authorizes the highway commissioner to regulate the use and the weight of vehicles on the state highway system.

39-12-03. COMMISSIONER OR LOCAL AUTHORITIES MAY LIMIT USE OF VEHICLES ON HIGHWAYS. Whenever any highway will be seriously damaged or destroyed by reason of deterioration, rain, snow, or

other climatic conditions unless the use of vehicles is prohibited or the weight of the vehicle thereon is limited, the commissioner or employees authorized by him by an order, and local authorities by ordinance or resolution, may prohibit the operation of vehicles upon such highway or may impose restrictions as to the weight of vehicles. The commissioner or employees making such order and local authorities enacting any such ordinance or resolution shall erect or cause to be erected and maintained signs designating the provisions of the order, ordinance, or resolution. Such signs shall be erected and maintained at each end of that portion of any highway affected thereby, and such order, ordinance, or resolution shall not be effective until such signs are erected and maintained. The operation of trucks or other commercial vehicles or limitations as to the weight thereof on designated highways may be prohibited or limited in the same manner.

Under section 39-13-07, N.D.C.C., the highway commissioner is granted the authority to place traffic-control devices as deemed necessary to regulate, warn, and guide traffic.

39-13-07. UNIFORM TRAFFIC-CONTROL DEVICES ON ALL STREETS AND HIGHWAYS. No traffic-control devices, including markings, signs, and signals, shall be used on any street or highway which do not conform to the standards of design and location as prescribed in the manual and specifications for a uniform system of traffic-control devices. The commissioner and local authorities, on streets and highways under their respective jurisdiction, shall place such devices as are deemed necessary to regulate, warn, and guide traffic.

Under section 39-10-04(3), (4), N.D.C.C., certain presumptions arise that traffic-control devices are properly erected by lawful authority and that they are presumed to comply with the requirements of Title 39, N.D.C.C., unless the contrary is shown. Specifically, those subsections state as follows:

3. Whenever official traffic-control devices are placed in positions approximately conforming to the requirements of this title, such devices shall be presumed to have been so placed by the official act or direction of lawful authority, unless the contrary shall be established by competent evidence.
4. Any official traffic-control device placed pursuant to the provisions of this title and purporting to conform to the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of this title, unless the contrary shall be established by competent evidence.

The highway commissioner's obligation to protect the state highway system and enforce weight limitations imposed upon vehicles and limiting their operation on such highways cannot be readily fulfilled without the weighing of the motor vehicle. The Legislature has vested the necessary police power in the highway commissioner to enforce these laws. In fulfilling that duty, and pursuant to the

authority granted to him in section 39-13-07, N.D.C.C., the highway commissioner may erect highway regulatory signs.

An operator who fails to heed the sign message would be violating the provisions of section 39-12-21, N.D.C.C.

39-12-21. PENALTY. Any driver of a vehicle who refuses to stop and submit the vehicle and load to a weighing when directed to do so by any police officer or any agent of this state having police powers relating to motor vehicles, shall be guilty of a class B misdemeanor.

The violation under the above statute is for failing to obey the direction of a police officer or agent of the state having police powers relating to that motor vehicle. The statute does not require that such direction be given orally and the proper erection of a sign would be sufficient to provide the direction required under the penalty provision.

- 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 or the applicable provisions of law are amended or repealed.

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