

Date Issued: February 6, 1986 (AGO 86-7)

Requested by: Dale L. Henegar, Commissioner
North Dakota Game and Fish Department

- QUESTIONS PRESENTED -

I.

Whether the procedures of N.D.C.C. sections 20.1-01-28 and 20.1-01-29 are applicable to noncriminal violations of rules approved by the game and fish commissioner pursuant to N.D.C.C. section 20.1-02-05(24) and of an order or proclamation of the Governor pursuant to N.D.C.C. section 20.1-08-01.

II.

Whether a person charged with a noncriminal violation of rules approved by the game and fish commissioner pursuant to N.D.C.C. section 20.1-02-05(24) or of an order or proclamation of the Governor pursuant to N.D.C.C. section 20.1-08-01 must post a bond to secure appearance equal to the amount set forth in such rule, order, or proclamation for its violation.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that the procedures of N.D.C.C. sections 20.1-01-28 and 20.1-01-29 are applicable to noncriminal violations of rules approved by the game and fish commissioner pursuant to N.D.C.C. section 20.1-02-05(24) and of an order or proclamation of the Governor pursuant to N.D.C.C. section 20.1-08-01.

II.

It is my opinion that a person charged with a noncriminal violation of rules approved by the game and fish commissioner pursuant to N.D.C.C. section 20.1-02-05(24) or of an order or proclamation of the Governor pursuant to N.D.C.C. section 20.1-08-01 must post a bond to secure appearance equal to the amount set forth in such rule, order or proclamation for its violation.

- ANALYSES -

I.

In 1985, the North Dakota Legislature authorized the game and fish commissioner to establish noncriminal penalties for any rules adopted by the commissioner. N.D.C.C. section 20.1-02-05(24) provides as follows:

20.1-02-05. POWERS OF COMMISSIONER. The commissioner may:

* * * * *

24. Establish noncriminal penalties for any rules adopted by

the commissioner. The maximum noncriminal penalty that may be set by the commissioner is a fine of two hundred fifty dollars. Violation of any rule not designated as having a noncriminal penalty is considered a criminal violation as established in the appropriate chapter of this title.

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N.D.C.C. section 20.1-08-01 authorizes noncriminal penalties for violation of any order or proclamation issued by the Governor pursuant to N.D.C.C. chapter 20.1-08. N.D.C.C. section 20.1-08-01 provides as follows:

20.1-08-01. ORDERS AND PROCLAMATIONS HAVE FORCE OF LAW - PENALTY. Any order or proclamation issued by the governor pursuant to this chapter has the force of law. Any person who violates a provision of such order or proclamation for which a noncriminal penalty is not provided for in the order of >sic! proclamation is guilty of a class B misdemeanor. The maximum noncriminal penalty that may be set in an order or proclamation is a fine of two hundred fifty dollars.

Procedures for enforcement of noncriminal game and fish violations, also established by the 1985 North Dakota Legislature, are set forth in N.D.C.C. sections 20.1-01-28 and 20.1-01-29. N.D.C.C. section 20.1-01-28 provides as follows:

20.1-01-28. CERTAIN GAME AND FISH VIOLATIONS NONCRIMINAL - PROCEDURES. Any person who has been cited for a noncriminal offense under this title may appear before a court of competent jurisdiction and pay the statutory fee at or prior to the time scheduled for a hearing, or if bond has been posted, may forfeit the bond by not appearing at the scheduled time. A person appearing at the time scheduled in the citation may make a statement in explanation of that person's action and the judge may at that time waive, reduce, or suspend the statutory fee or bond, or both. If the person cited follows the foregoing procedures, that person has admitted the violation and has waived the right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the judge must be identical to the statutory fee established by section 20.1-01-30. Within ten days after forfeiture of bond or payment of the statutory fee, the judge shall certify to the commissioner admission of the violation.

This section does not allow a halting officer to receive the statutory fee or bond.

N.D.C.C. section 20.1-01-29 provides as follows:

20.1-01-29. HEARING PROCEDURES.

1. If a person cited for a violation that is designated as a noncriminal offense in this title does not choose to follow one of the procedures set forth in section 20.1-01-28, that person may request a hearing on the issue of the commission of the violation charged. The hearing must be held at the

time scheduled in the citation or at some future time, not to exceed ninety days later, set at that first appearance.

2. At the time of a request for a hearing on the issue of commission of the violation, the person charged shall deposit with the court an appearance bond equal to the statutory fee for the violation charged.
3. The state must prove the commission of a charged violation at the hearing under this section by a preponderance of the evidence. If, after a hearing, the court finds that the person had committed a noncriminal violation of this title or related proclamations or rules, the court shall notify the department within ten days of the date of hearing.

N.D.C.C. section 20.1-01-28 requires that the bond required to secure appearance before the judge be identical to the statutory fee established by N.D.C.C. section 20.1-01-30, the fee being the sum of fifty dollars for a class 1 noncriminal offense and a fee of twenty-five dollars for a class 2 noncriminal offense.

Both N.D.C.C. sections 20.1-02-05(24) and 20.1-08-01 authorize the game and fish commissioner or the Governor to establish a noncriminal penalty of not in excess of two hundred fifty dollars. A conflict exists between the statutory hearing procedure for noncriminal game and fish violations set forth in N.D.C.C. section 20.1-01-28 since the maximum bond required to secure appearance must be identical to the fee set forth for class 1 and class 2 noncriminal offenses, amounts which may be substantially less than the penalties established by the game and fish commissioner pursuant to his rules or in the Governor's order or proclamation.

N.D.C.C. sections 20.1-01-28, 20.1-01-29, 20.1-01-30, and amendments to 20.1-08-01 were all set forth in House Bill 1070 as offered by the Legislative Council and the Interim Judiciary "B" Committee. Also included within House Bill 1070 were various amendments to existing game and fish laws which imposed class 1 or class 2 noncriminal penalties.

The conflicting statutory provisions must be construed, if possible, to give effect to both provisions. In the case of *In Interest of B. L.* 301 N.W.2d. 387 (N.D. 1981) the North Dakota Supreme Court said:

If the language of a statute is of doubtful meaning, or if adherence to the strict letter of the statute would lead to injustice, absurdity, or contradictory provisions, a duty descends upon the courts to ascertain the true meaning. >Citations omitted.! Thus, in pursuance of the general objective of giving effect to legislative intent, we are not controlled by the literal meaning of the language of the statute, but the spirit or intention of the law prevails over the letter. >Citations omitted.!

N.D.C.C. section 1-02-38 provides guidance for the determination of legislative intent. That statute provides as follows:

1-02-38. INTENTIONS IN THE ENACTMENT OF STATUTES. In enacting

a statute, it is presumed that:

1. Compliance with the constitutions of the state and of the United States is intended.
2. The entire statute is intended to be effective.
3. A just and reasonable result is intended.
4. A result feasible of execution is intended.
5. Public interest is favored over any private interest.

In addition, N.D.C.C section 1-02-39 provides assistance in determining the intention of legislation. That section provides as follows:

1-02-39. AIDS IN CONSTRUCTION OF AMBIGUOUS STATUTES. If a statute is ambiguous, the court, in determining the intention of the legislation, may consider among other matters:

1. The object sought to be attained.
2. The circumstances under which the statute was enacted.
3. The legislative history.
4. The common law or former statutory provisions, including laws upon the same or similar subjects.
5. The consequences of a particular construction.
6. The administrative construction of the statute.
7. The preamble.

An examination of the 1985 Report of the North Dakota Legislative Council, Judiciary "B" Committee, discloses that the committee recommended House Bill 1070 to make a number of the less serious offenses of the game and fish title noncriminal offenses and to allow noncriminal penalties to be established for any order or proclamation issued by the Governor and for any rules adopted by the game and fish commissioner. In addition, it was the recommendation of the committee to provide for a system for paying fees "which is similar to that used for noncriminal traffic offenses."

Although N.D.C.C section 20.1-01-28 requires that the bond to secure appearance before the judge must be identical to the statutory fees established for class 1 or class 2 noncriminal offenses in N.D.C.C section 20.1-01-30, N.D.C.C. section 20.1-01-29(3) specifically requires the court to notify the game and fish department, within ten days of the hearing of the commission of any noncriminal violation "of this title or related proclamations or rules." It is clear from this statutory language that the North Dakota legislature intended the noncriminal hearing procedures as authorized by N.D.C.C. sections 20.1-01-08 and 20.1-01-29 to apply to violations of the game and fish commissioner's rules or an order or proclamation of the Governor

rather than limitations solely to class 1 and class 2 noncriminal offenses.

It is also clear from the legislative history that the North Dakota Legislature intended to provide noncriminal hearing procedures for all noncriminal game and fish violations. A limitation of the hearing procedures solely to class 1 and class 2 noncriminal offenses, to the exclusion of violations of the commissioner's rules or an order or proclamation of the Governor, would result in unenforceability of violations of the rules, orders, and proclamations. Should this be the case, the entire statute would not be effective and a result feasible of execution would not be obtained. Therefore, it was the legislative intent to provide the statutory hearing procedures for all noncriminal game and fish violations.

II.

The hearing procedure set forth in N.D.C.C. section 20.1-01-28 authorizes a violator to pay the statutory fee at or prior to the time scheduled for a hearing or, if a bond has been posted, to forfeit the bond by not appearing at the scheduled time. This procedure is similar to that procedure utilized for disposition of noncriminal traffic offenses in N.D.C.C. chapter 39-06.1. The North Dakota Legislature specifically authorized the imposition of a penalty up to the sum of two hundred fifty dollars for a violation of the commissioner's rules or an order or proclamation of the Governor.

N.D.C.C. section 20.1-01-28 requires the bond to be posted to secure an appearance to be identical to the statutory fee established by N.D.C.C. section 20.1-01-30, the sums of twenty-five dollars or fifty dollars. N.D.C.C. section 20.1-01-29(2) requires a person, at the time of a request for hearing, to deposit with the court an appearance bond equal to the statutory fee for the violation charged. If the bond is limited to that of a class 1 or class 2 noncriminal offense, no person who is alleged to have violated a rule of the commissioner or an order or proclamation of the Governor would be permitted to forfeit the bond by not appearing at the scheduled time, an option afforded such person in N.D.C.C. section 20.1-01-28. The legislative history of the Judiciary "B" Committee expresses an intent that the system for paying fees be similar to that used for noncriminal traffic offenses. This object of the North Dakota Legislature would not be attained should the posted bond be limited to the maximum fifty-dollar amount for class 1 noncriminal offenses. To ensure that the statutory provisions are effective and that a result feasible of execution is obtained, a person charged with a violation of any rule of the commissioner, or order or proclamation of the Governor, must deposit with the court at the time of a request for hearing an appearance bond equal to the fee set forth in such rule, proclamation, or order. The posting of this bond will permit the alleged violator to receive the benefit of all options available to such person in N.D.C.C. section 20.1-01-28. Strict application of the provisions of N.D.C.C. section 20.1-01-30 would frustrate the general legislative intent to provide disposition of noncriminal game and fish violations in a method similar to that used for noncriminal traffic offenses.

- EFFECT -

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

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