

Office of the Attorney General  
State of North Dakota

Opinion No. 87-25

Date Issued: December 28, 1987

Requested by: Laurie A. Cook  
Pembina County State's Attorney

--QUESTION PRESENTED--

Whether a violation of N.D.C.C. ch. 39-21 of which the penalty provisions of N.D.C.C. § 39-21-46(1) may be imposed is an infraction or a noncriminal violation subject to the procedures of N.D.C.C. § 39-06.1-02.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that a violation of N.D.C.C. ch. 39-21 of which the penalty provision of N.D.C.C. § 39-21-46(1) may be imposed, unless another penalty is otherwise specifically provided by law, is an infraction.

--ANALYSIS--

N.D.C.C. § 39-21-46(1) is the general penalty provision for a violation of N.D.C.C. ch. 39-21. That section provides:

39-21-46. Scope and effect of equipment requirements--Penalty.

1. It is unlawful for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which the actor knows to be in such unsafe condition as to endanger any person, or which the actor knows does not contain those parts or is not at all times equipped with lamps and other equipment in proper condition and adjustment as required in this chapter, or which the actor knows is equipped in any manner in violation of this chapter, or for any person to do any act forbidden or fail to perform any act required under this chapter. Any person who violates any of the provisions of section 39-21-08, 39-21-09, 39-21-10, or 39-21-14 must be assessed a fee of ten dollars. Any person who, in violation of this chapter, drives, or any owner who causes or knowingly permits to be driven upon a highway, any vehicle or combination of vehicles which that person knows is unsafe or improperly equipped is guilty of an infraction.

Other than a \$10.00 fee assessed for violation of the sections of N.D.C.C. ch. 39-21 enumerated in that statute, other violations of that chapter are deemed to be an infraction.

An infraction is a criminal offense under North Dakota state law imposing a penalty of a fine of up to \$500.00 and an enhanced penalty for a second or subsequent offense. N.D.C.C. § 12.1-32-01(7).

Although N.D.C.C. § 39-21-46(1) states that a violation of that chapter is an infraction other than the specifically enumerated sections, other provisions of North Dakota state law appear to retain the noncriminal fee assessment and procedures. N.D.C.C. § 39-06.1-02 declares a person cited for a traffic violation under state law or municipal ordinance, other than an offense listed in N.D.C.C. § 39-06.1-05, to be deemed to be charged with a noncriminal offense. N.D.C.C. § 39-06.1-05 sets forth several criminal traffic offenses. The only N.D.C.C. chapter 39-21 violation listed in N.D.C.C. § 39-06.1-05 is the offense of operating a modified motor vehicle in violation of N.D.C.C. § 39-21-45.1.

N.D.C.C. § 39-06.1-08 includes many N.D.C.C. chapter 39-21 violations within the definition of a "nonmoving violation." That section provides:

39-06.1-08. "Nonmoving violation" defined. For the purposes of section 39-06.1-06, a "nonmoving violation" means:

1. A violation of section 39-04-11, 39-06-44, 39-06-45, 39-10-47, 39-10-49, 39-10-50, 39-10-51, 39-10-54.1, 39-21-08, 39-21-10, 39-21-11, or 39-21-14, or a violation of any municipal ordinance equivalent to the foregoing sections.

2. A violation, discovered at a time when the vehicle is not actually being operated, of section 39-21-03, 39-21-05, 39-21-13, 39-21-19, 39-21-32, 39-21-37, 39-21-39, or 32-21-44.2, or a violation of any municipal ordinance equivalent to the foregoing sections.

In addition, N.D.C.C. § 39-06.1-09, defining, a "moving violation" includes all violations of N.D.C.C. ch. 39-21 except those violations found in N.D.C.C. §§ 39-21-44, 39-21-45.1, and those sections specifically listed in N.D.C.C. § 39-06.1-08(1). That section provides:

39-06.1-08. "Nonmoving violation" defined. For the purposes of section 39-06.1-06, a "nonmoving violation" means:

1. A violation of section 39-04-11, 39-06-44, 39-06-45, 39-10-47, 39-10-49, 39-10-50, 39-10-51, 39-10-54.1, 39-21-08, 39-21-10, 39-21-11, or 39-21-14, or a violation of any municipal ordinance equivalent to the foregoing sections.

N.D.C.C. § 39-06.1-10(3)(a)(9) assesses two points for a "noncriminal adjudication or admission of" a violation of N.D.C.C. § 39-21-46(1).

N.D.C.C. § 39-07-07 specifically requires certain procedures to be followed by a halting officer for a violation of N.D.C.C. ch. 39-21. That section provides:

39-07-07. Halting person for violating traffic regulations--Duty of officer halting. Whenever any person is halted for the violation of any of the provisions of chapters 39-01 through 39-13, 39-18, 39-21, and 39-24, or of equivalent city ordinances, the officer halting that person, except as otherwise provided in section 39-20-03.1 or 39-20-03.2, otherwise provided in section 39-07-09 and section 39-20-03.1 or 39-20-03.2, may:

1. Take the name and address of the person;
2. Take the license number of the person's motor vehicle; and
3. Issue a summons or otherwise notify that person in writing to appear at a time and place specified in the summons or notice.

A halting officer employed by any political subdivision of the state may not take a person into custody or require that person to proceed with the officer to any other location for the purpose of posting bond, where the traffic violation was a noncriminal offense under section 39-06.1-02. The officer shall provide the person with an envelope for use in mailing the bond.

By designating a violation of N.D.C.C. ch. 39-21, other than the enumerated offenses, as an infraction, a clear conflict exists between the provisions of N.D.C.C. § 39-21-46(1) and other provisions of the North Dakota state law which otherwise treat such violations as noncriminal traffic offenses. Because of this conflict, it is necessary to determine the legislative intent by use of other extrinsic aids, including the legislative history of that enactment. *Coulter v. Ramberg*, 55 N.W.2d 516 (N.D.1952); N.D.C.C. § 1-02-39(3).

Prior to 1977, N.D.C.C. § 39-21-46 established the penalty for the violation of a provision of N.D.C.C. ch. 39-21 as a fee of \$20.00. However, in 1977, Senate Bill No. 2272 changed the \$20.00 fee assessment to the current infraction penalty. In testimony presented to the legislative committees, Claire Aubol of the Motor Vehicle Department specifically noted in a written summary of the bill that it changed "the penalty provisions from a 'fee of \$20.00' to 'an infraction'."

There is no question that Senate Bill No. 2272 as adopted by the 1977 Legislature changed the penalty provision by increasing the penalty for a violation of the provision of N.D.C.C. ch. 39-21.

An examination of those statutory provisions in which a N.D.C.C. ch. 39-21 violation is treated as a noncriminal offense fails to disclose substantial legislative changes since the 1977 amendments of N.D.C.C. § 39-21-46(1).

In the 1985 Legislative Session, N.D.C.C. § 39-21-45.1, pertaining to the modification of a motor vehicle, was made a criminal offense by specific exclusion from N.D.C.C. § 39-06.1-05. In the amendments to N.D.C.C. § 39-21-45.1, no penalty provision was adopted. Rather, the criminal penalty provision of N.D.C.C. § 39-21-46(1) was utilized to provide the criminal penalty for the previous section. In N.D. Op. Att'y Gen. 86-1, I concluded that a violation of N.D.C.C. § 39-21-45.1 constituted an infraction, a criminal offense.

If the penalty provision of N.D.C.C. § 39-21-46(1) would be determined to be a noncriminal penalty, the object and purpose of amendments to N.D.C.C. § 39-21-45.1 making that section a criminal offense would be defeated. This would not lead to a result not intended by the Legislature. A construction of a statute should not be adopted to nullify or defeat the intention of the legislature. *Coulter v. Ramberg*, 55 N.W.2d 516 (N.D.1952).

N.D.C.C. § 1-02-07 provides:

1-02-07. Particular controls general. Whenever a general provision in a statute is in conflict with a special provision in the same or in another statute, the two must be construed, if possible, so that effect may be given to both provisions, but if the conflict between the two provisions is irreconcilable the special provision must prevail and must be construed as an exception to the general provision, unless the general provision is enacted later and it is the manifest legislative intent that such general provision shall prevail.

Although N.D.C.C. §§ 39-06.1-08 and 39-06.1-09 do classify N.D.C.C. ch. 39-21 violations as either nonmoving or moving violations, I find that it is the manifest legislative intent that the penalty for violation of a provision of N.D.C.C. ch. 39-21 be an infraction unless another penalty is expressly provided for by law. In addition to the sanctions specifically stated in N.D.C.C. § 39-21-46(1), N.D.C.C. ch. 39-21 contains other provisions which are noncriminal and subject to the N.D.C.C. § 39-06.1-02 procedure. These provisions include N.D.C.C. § 39-21-41.2, the child restraint law, and N.D.C.C. § 39-21-50, pertaining to the display of a slow-moving vehicle emblem.

In N.D. Op. Att'y Gen. 84-16, a similar issue arose pertaining to interpretation of the child restraint law of N.D.C.C. § 39-21-41.2. Although I do agree with the conclusion reached in that opinion, I do not agree with specific statements in that opinion that

the legislative enactments demonstrate a clear intent to treat violations of N.D.C.C. ch. 39-21 as noncriminal traffic offenses. To the extent that N.D. Op. Att'y Gen. 84-16 conflicts with the statements made in this opinion, this opinion should be followed.

--EFFECT--

This opinion is issued pursuant to N.D.C.C. § 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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Attorney General

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