

**OPINION  
45-198**

September 17, 1945            (OPINION)

MOTOR VEHICLES RECONSTRUCTED

RE: License

This will acknowledge your letter of September 13, enclosing a letter written by E. K. Sheaffer, Motor Vehicle Registrar, upon which you request an opinion from this office.

As I understand, the policy of the Motor Vehicle Registrar, no penalties are charged for the re-registration of reconstructed motor vehicles. A reconstructed vehicle is defined by the statute as, "any vehicle which shall have been assembled or constructed largely by means of new or used essential parts, derived from other vehicles or makes of vehicles of various names, motors and types, or which if originally otherwise constructed, shall have been altered materially by the removal of essential parts or by the addition of substitution of new or used essential parts derived from other vehicles or makes of vehicles, except that a motor vehicle that has been constructed by the use of a complete old or new engine, differential, or transmission, may be registered by the payment of the fee for the calendar year, on satisfactory proof to the department of such reconstructed vehicle." See section 39-0401 (4) of 1943 Revised Code. As I understand, the practice now prevailing, upon receipt of an affidavit that a motor vehicle has been reconstructed, the motor vehicle registrar issues a license upon payment of the fees for the calendar year in which the re-registration of the vehicle is requested, without payment of any penalty.

I further understand that upon the re-registration of motor vehicles which have not been used upon the highways of this state for one year or several years, the motor vehicle registrar, upon satisfactory proof by affidavit that such car has not been used upon the highways of this state for one or more years, issues a license for the year in which the registration is requested, upon payment of a flat fee of \$5.00 for each calendar year during which the vehicle was not in use and upon payment of the current year's license fee, together with such penalties on that year's fee as are prescribed by the statute, if the registration occurs after penalties become due. Now the question that arises is this: Is there any statutory justification for charging penalty in connection with the re-registration of a car that has not been used upon the highways of this state for one or more years, by imposing penalties prescribed by statute, if the registration occurs after such penalties are chargeable?

Section 39-0418, of the North Dakota Revised Code of 1943, provides for the assessment of a penalty of ten cents a day, which shall be added to the license fee for each and every day such license shall be delinquent, for not more than fifteen days, and two dollars for every thirty days or fraction thereof, not to exceed one hundred and fifty days. However, if the registrar is satisfied that a vehicle has not been operated on the highways during one or more years previous to the application for re-registration, no penalty fee shall be charged.

When this statute is read in connection with section 39-0441, of the North Dakota Revised Code of 1943, which says "Upon satisfactory proof to the registrar that a vehicle owned by a resident of this state was not used upon any of the highways of this state in any one or more years, such vehicle, upon payment of the fee for the current year prescribed in this chapter, and upon the further payment of a flat fee of \$5.00 for each calendar year in which the vehicle was not registered, and no license fee was paid therefor, may be registered without any additional penalty " it becomes apparent that the intent of the legislature was to impose a flat fee of \$5.00 a year for each and every year that such car had not been licensed, without additional penalty being imposed. This is further emphasized by the fact that section 39-0418 specifically states that upon re-registration no penalty shall be charged. If the purpose of the statute is to procure registration of motor vehicles before a certain date, without imposition of penalties, and that the avoidance of such penalties is offered as an incentive for the registration of the same on time, and that the imposition of penalties provided by the law are in the nature of punishment for not having registered the vehicle on time, then it further appears that a vehicle not in use on the highways should be re-registered without imposing penalties. There would be no object in licensing such vehicle until it was ready for use on the highways again, and that may occur at any time of the year. It seems to be the clear intent of the statutes above referred to, that a vehicle which has not been used on the highways be registered by payment of the flat fee for each year for which it was not licensed, the current license fee, without penalty, and in view of the fact that reconstructed vehicles may be, and have been, registered, without imposition of penalty, no matter when registered in the calendar year, it would seem that both should fall in the same category.

It is, therefore, the opinion of this office that under the statutes the motor vehicle registrar is not authorized to impose penalties upon any motor vehicle registered after having been in non-use for one or more years and that the law is complied with by the imposition of the flat fee and the payment of the current license fee without the imposition of any penalty.

NELS G. JOHNSON

Attorney General