

**OPINION
45-221**

May 14, 1945 (OPINION)

OFFICIALS

RE: Appointive - Bonds

This will acknowledge the receipt of your letter under date of May 9th, 1945, wherein you say that Mr. Klautdt of the highway department has inquired of your office whether or not individuals whom the highway commissioner appoints as agents to issue motor-vehicle operator licenses may be bonded with the state bonding fund. You have requested the opinion of the attorney general in regard thereto.

Section 39-0615 of the North Dakota Revised Code for 1943 provides:

The commissioner shall appoint in each county and in all municipalities or other subdivisions thereof, where possible, as many local agents as in his judgment may be deemed necessary for the purpose of issuing and causing to be issued operators' licenses as provided in this chapter. Each such local agent may issue such licenses within or without the county of his residence. The compensation that may be charged by such local agent shall not exceed the sum of ten cents for each such license issued, which sum shall be paid by the person to whom the license is issued, in addition to the license fee provided for in this chapter."

The foregoing section specifically provides that persons appointed by the state highway commissioner to issue operators' licenses shall act as his agents for that purpose. It is an elementary principle of law that the act of an agent, within the scope of his authority as such, is the act of his principal. Consequently, when a driver's license is issued by such agent, such license is issued in the name of the commissioner and is in effect and in contemplation of law, issued by the commissioner.

Section 26-2308 of the North Dakota Revised Code for 1943 reads as follows:

The public employees of the state and each political subdivision thereof, as the case may be, shall be insured in the fund according to the provisions of this chapter automatically and without the issuance of any bond and without further action by the commissioner. The provisions of this chapter and of any statute requiring a bond shall constitute the bond of each and every public employee for the purpose of any law of this state requiring such bond and shall constitute the entire contract between the fund and the state or its political subdivisions, respectively, as the obligee in any such bond."

Now the question arises as to whether or not agents appointed by the highway commissioner pursuant to the provisions of section 39-0615 of the Revised Code are public employees of the state, within the

meaning of said section 26-2308.

4. Employ all engineers, assistants, clerks, agents, attorneys, and other employees, required for the proper transaction of the business of his office, or of the state highway department, fix their titles, determine their duties, the amount of their bonds in the state bonding fund, if any are required, and their compensation, and shall discharge them in his discretion; and"

It is therefore my opinion that persons appointed by the highway commissioner as agents to issue operators' licenses function as employees of the state when they issue such licenses, that the moneys which they receive for such licenses belong to the state and that it is the duty of the commissioner to insure the fidelity of such agents with the state bonding fund so as to protect such funds against loss by defalcation or misappropriation. It is further my opinion that it is the duty of the manager of the bonding fund, upon the application or request of the commissioner, to insure the fidelity of such agents. And, further, it is my opinion that the fidelity of such agents may not be insured with any firm or corporation other than the state bonding fund.

NELS G. JOHNSON

Attorney General