

**OPINION
47-186**

August 19, 1947 (OPINION)

MOTOR VEHICLE

RE: Drivers License - Examination or Test

This will acknowledge your letter of August 13 in which you refer to Section 39-0606 (1) as amended by Chapter 265 of the 1947 Session Laws.

I recently had occasion to write to a lady inquiring about her license under Chapter 265. I enclose a copy of the letter I wrote on August 1 in that connection. It covers at least in part the question that you present.

I note that the Highway Department has advised you that you should not issue a 1947 driver's license to anyone who does not hold a current North Dakota driver's license. You wish to know whether or not under the terms of the law, particularly subsection 1 of Chapter 265, which amends Section 39-0606 of the North Dakota Revised Code, you may issue a 1947 driver's license to anyone who does not hold a current license but who did have a license for 1944 or prior years which had not been revoked.

As you will note, Chapter 265 of the 1947 Session Laws grants broad powers to the State Highway Department. It says, "In case any application for a motor vehicle operator's license, or other information coming to the attention of the state highway department of this state, suggests or indicates that the applicant may be lacking in qualifications necessary to entitle him to such license, he may be required to undergo an examination under oath, and such physical, mental and driving tests as may be necessary to determine his qualifications."

While subsection 1 of Chapter 265 of the 1947 Session Laws would seem to indicate that no examination would be required for an applicant who has previously received an operator's license in the State of North Dakota, I believe that the requirement of the Highway Department that an operator's license may not be issued in 1947 to anyone who does not hold a current North Dakota operator's license comes within the terms of the law. A current operator's license would be one for the period of July 1, 1945 to July 1, 1947.

The fact that a driver did not obtain a license for 1945 to 1947 is a fact, or "other information coming to the attention of the highway department" which suggests or might indicate that the applicant might be lacking in qualifications to entitle him to such a license. It is on that basis that the State Highway Department may require him to undergo an examination before an operator's license is again granted. It is, of course, true that if the State Highway Department should deem that the mere fact that an operator did not apply during one or more licensing period for an operator's license, was no indication of any lack of qualifications to operate a motor vehicle, it could no doubt allow such person to be licensed as a motor vehicle operator

because such operator had previously had an operator's license in the state. I do not believe that subsection 1 of Chapter 265 detracts from the broad powers granted to the State Highway Department under the quotation heretofore set forth and that while the State Highway Department could allow the licensing of an operator who was not licensed during one or more licensing periods as an operator of a motor vehicle, it does not mean that it may not require him under the broad terms of the law to undergo an examination before being entitled to receive an operator's license for the period beginning July 1, 1947.

NELS G. JOHNSON

Attorney General