

**OPINION**  
**54-62**

July 13, 1954        (OPINION)

HIGHWAYS

RE: Speed Laws - Exemption to Volunteer Firemen

You Have invited our attention to section 39-0906 of the North Dakota Revised Code of 1943 which provides in part that fire department or fire patrol vehicles when traveling in response to a fire alarm are exempt from the speed limitations set out in section 39-0902 of the said code, as amended.

You have asked us if this exemption extends to volunteer firemen when driving their private cars to the fire hall to get their fire trucks and fight a fire.

Section 39-0902, after enumerating the various limitations, provides: "\* \* \* It shall be prima facie unlawful for any person to exceed any of such foregoing speed limitations. \* \* \*" (Underlining ours).

In our opinion some meaning must be attached to the phrase "prime facie." As used in this statute, we construe "prime facie" to mean that evidence of speed in excess of the limitations raises a presumption of unlawfulness sufficient to secure a conviction unless other facts are presented which rebut the unlawfulness of the speed. In other words, it appears to us that the Legislature anticipated there may be certain circumstances in which a speed in excess of the limitations was not unlawful. (For definitions of prima facie, see 33 Words and Phrases, 540).

In our opinion a volunteer fireman driving his private vehicle to the fire hall in response to a fire call would be an instance in which a speed in excess of the limitations would not be unlawful and we therefore conclude that such fireman would clearly be under the exemption provided in section 39-0906.

"\* \* \* As a general rule, however, public officers or employees cannot be subjected to a criminal prosecution for violation of speed regulations while in the discharge of duties in which speed is essential to their efficient performance, as for example, members of a fire department while responding to call or alarm. \* \* \*" (25 Am. Jur. 514, Highways, section 217).

To the effect that a speed limitation exemption statute, in substance, and to a large extent in wording, exactly the same as 39-0906, applies to a fireman's private vehicle used in traveling to a fire, rather than being limited to municipally owned official fire department vehicles, see Vandell v. Sanders, 85 N.H. 143, 155 A. 193, 80 A.L.R. 550.

This opinion would not be complete if we did not also invite your attention to section 39-0901 of the North Dakota Revised Code of 1943, and section 39-0803 of the 1953 Supplement to the code. These

sections provide as follows:

"39-09-01. CARE REQUIRED IN OPERATING VEHICLE. Any person driving a vehicle on a highway shall drive the same at a careful and prudent speed not greater than is reasonable and proper, having due regard to the traffic, surface, and width of the highway and any other conditions then existing. No person shall drive any vehicle upon a highway at a speed to endanger the life, limb, or property of any person."

"39-0803. RECKLESS DRIVING: PENALTY. Any person shall be guilty of reckless driving if he drives a vehicle upon a highway:

1. Carelessly and heedlessly in willful or wanton disregard of the rights or safety of others;
2. Without due caution and circumspection; or
3. At a speed or in a manner to endanger or likely to endanger any person or the property of another; \* \* \*."

It is our opinion also that a volunteer fireman while exempt from the speed limitations while traveling in his private vehicle in answer to a fire call is not exempt from the provisions of sections 39-0901 and 39-0803.

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