

OPINION
57-85

August 1, 1957 (OPINION)

CRIMES

RE: Traffic Violation - Suspension of Sentence

We herewith acknowledge receipt of your letter of July 30, 1957, requesting an opinion construing the provisions of Section 41, Chapter 251, 1955 Session Laws and the provisions of Chapter 12-53 of N.D.R.C. of 1943 as amended.

Chapter 12-53 of the N.D.R.C. provides for two separate and distinct suspensions. Section 12-5301 of the N.D.R.C. of 1943 provides for the suspension of a sentence which has which has been imposed and applies to only those sentences which the court or magistrate may, in their discretion, pronounce.

Section 15-5313 of the 1953 Supplement of the N.D.R.C. of 1943 as amended by Chapter 124 of the 1955 Session Laws applies before a sentence is imposed and is authority for the suspension of such imposition. There appears to be no limitation upon the court in exercising this authority.

it will be noted that Section 41 of Chapter 251 of the 1955 Session Laws contains a provision that any person who drives a motor vehicle under certain circumstance shall be punished by imprisonment for not less than two days and also that there may be imposed in addition thereto, a fine.

It is the opinion of this office that the authority of the court to suspend a sentence once imposed, does not extend to those punishments which the Legislature has indicated as being mandatory by the use of the word shall, but that such authority extends only to those sentences which the courts may prescribe in their discretion.

It is also the opinion of this office that the authority given to the courts by virtue of Section 12-5301 of the 1953 Supplement as amended by Chapter 124 of the 1955 Session Laws, is without such limitations as is necessarily applied to the suspension of sentence already imposed.

Chapter 261 of the 1957 Session Laws indicates that the Legislature intended that the courts may suspend or defer imposition of sentence in cases involving Chapter 251 of the 1955 Session Laws.

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