

OPINION
58-110

April 1, 1958 (OPINION)

HIGHWAY PATROL

RE: Duties - Enforcement of City Ordinances

We have your request for an opinion dated March 28, 1958. In it you state that you have had requests from municipalities to charge traffic offenders under city ordinance rather than state law in cases where highway patrolmen are acting within city limits and observe traffic violations therein.

The powers of the Highway Patrol are prescribed by section 39-0309 of the 1957 Supplement to the North Dakota Revised Code of 1943. Subsection 1 provides that a patrolman has the power of a peace officer for the purpose of enforcing "* *the provisions of this title* *." Subsection 2 provides that the patrolman has the power to make arrests for violations of any of "* *the provisions of this title* *."

It is clear from the quoted language that highway patrolmen have the power to enforce state law regulating motor vehicle traffic. We are unable to find any provisions in the law which give them the power or impose upon them the duty of enforcing municipal law. We believe, therefore, that the power and the duty of highway patrolmen are solely to enforce state law.

We recognize the fact that in many instances state and municipal law are identical but they are nonetheless mandates of distinguishable sovereignties. Furthermore, the patrolmen are state employees, not municipal, and they are trained in the enforcement of state law, not municipal. It is most certainly understandable that municipalities are anxious to obtain the revenue resulting from prosecutions in their courts, but they are not in a position to complain where an officer not in their employ enforces a law not of their making.

In the enforcement of violations of city ordinance, the highway patrolman has no more authority than a private citizen of such municipality. If he encounters a traffic violation which is an offense against both the state and the city, we believe that he would be remiss in his duties as a state peace officer to ignore the state offense, and he may in fact be committing a crime by compounding the offense. (See section 12-1711 N.D.R.C.). There is no legal objection, of course, to the prosecution of the same individual in both state and city courts for a single act which is an offense against both the city and the state. We are aware of no circumstances, however, which would legally justify a patrolman in ignoring a state offense or failing to prosecute it in the appropriate court. Charging an individual under municipal law is not a substitute for charging him under the state law, the enforcement of which is the duty of the highway patrol.

LESLIE R. BURGUM

Attorney General