

N.D.A.G. Letter to Solberg (Nov. 20, 1992)

November 20, 1992

Mr. Wayne O. Solberg
Fargo City Attorney
PO Box 1897
Fargo, ND 58107-1897

Dear Mr. Solberg:

Thank you for your October 7, 1992, letter in which you raise a possible conflict between the provisions of N.D.C.C. §§ 39-07-07 and 39-07-08 and question whether such conflict would prohibit the adoption of a municipal ordinance authorizing a law enforcement officer to take custody of a person who allegedly violated a noncriminal traffic offense and refuses to sign a promise to appear.

N.D.C.C. § 39-07-08 provides:

39-07-08. Hearing - Time - Promise of defendant to appear - Failure to appear - Penalty. The time to be specified in the summons or notice provided for in section 39-07-07 must be within thirty-five days after the issuance of the summons or notice or earlier if so ordered by the magistrate of the city or county having jurisdiction over the offense or if the person halted demands an earlier hearing, and, if the person halted desires, the person may have the right, at a convenient hour, to an immediate hearing or to a hearing within twenty-four hours. The hearing must be before a magistrate of the city or county in which the offense was committed. If an immediate hearing is demanded, a county judge serving more than one county, may, with the consent of the respective prosecuting attorneys, order the hearing to be held in any of the counties in which the county judge has jurisdiction, rather than in the county where the offense was allegedly committed. Upon the receipt from the person halted of a written promise to appear at the time and place mentioned in the summons or notice, the officer shall release the person from custody. Any person refusing to give a written promise to appear must be taken immediately by the halting officer before the nearest or most accessible magistrate, or to such other place or before such other person as may be provided by a statute or ordinance authorizing the giving of bail. Any person willfully violating the person's written promise to appear is guilty of a class B misdemeanor, regardless of the disposition of the charge upon which the person originally was halted. The time limitations for a hearing as provided by this section do not preclude a recharging of the alleged violation if the person being charged receives a new summons or notice subject to the provisions of this section.

This section authorizes the halting officer to take custody of a traffic violator who refuses to give a written promise to appear at the time and place mentioned in the summons or notice to respond to the offense.

N.D.C.C. § 39-07-07 provides:

39-07-07. Halting person for violating traffic regulations - Duty of officer halting. Whenever any person is halted for the violation of any of the provisions of chapters 39-01 through 39-13, 39-18, 39-21, and 39-24, or of equivalent city ordinances, the officer halting that person, except as otherwise provided in section 39-07-09 and section 39-20-03.1 or 39-20-03.2, may:

1. Take the name and address of the person;
2. Take the license number of the person's motor vehicle; and
3. Issue a summons or otherwise notify that person in writing to appear at a time and place to be specified in the summons or notice.

A halting officer employed by any political subdivision of the state may not take a person into custody or require that person to proceed with the officer to any other location for the purpose of posting bond, where the traffic violation was a noncriminal offense under section 39-06.1-02. The officer shall provide the person with an envelope for use in mailing the bond.

(Emphasis supplied.)

The underlined portion of the above section was adopted as an amendment to N.D.C.C. § 39-07-07 in the 1981 Legislative Session as House Bill 1595. As you note in your October 7, 1992, letter to me, the underlined language of this section appears to be in conflict with the provisions of N.D.C.C. § 39-07-08 which authorize the halting officer to take custody of a traffic violator who refuses to sign a promise to appear.

The North Dakota Legislature has evidenced its intent to establish a uniform system of enforcement of traffic laws and procedures for disposition of alleged violations of those laws. This intent is evident in the adoption of N.D.C.C. ch. 39-06.1 which created uniform hearing procedures for noncriminal traffic offenses as defined by that chapter. As a part of this uniform system the Legislature has established procedures in N.D.C.C. §§ 39-06.1-02 and 39-06.1-03 for a quick and relatively inexpensive method to permit an alleged violator to admit or contest a violation of the provisions of N.D.C.C. Title 39.

A written promise to appear assures the appearance of an alleged violator in court to answer the charged offense. The violator may, however, waive later court appearances on a noncriminal traffic offense by utilizing the procedures established in N.D.C.C. § 39-06.1-02 of forfeiting the bond or paying the statutory fee. If an alleged violator does not make the required court appearance, pay the statutory fee, or post and forfeit bond that offender will be subject to criminal penalties imposed by N.D.C.C. § 39-06.1-04, if that offender has signed a written promise to appear. The written promise to appear is a condition precedent to criminal liability. In addition, that violator may also be subject to possible administrative suspension of driving privileges if the violator has failed to appear in court or post and forfeit bond after signing a promise to appear. N.D.C.C. § 39-06-32(6).

N.D.C.C. § 39-07-08 envisions a prompt and speedy release of a traffic violator upon execution of a written promise to appear. This release is contemplated for all noncriminal traffic violations but would not include those criminal traffic offenses listed in N.D.C.C. § 39-06.1-05 and 39-07-09 or in the case of application of N.D.C.C. § 29-06-15.1 involving nonresident traffic violators.

Statutes must be construed to fulfill the objective and intent of the Legislature and to avoid absurd and ludicrous results. Larson v. Wells Cty. Water Resource Brd., 385 N.W.2d 480 (N.D. 1986); N.D.C.C. § 1-02-38. Statutes must also be construed as a whole to ascertain and give effect to the intent of the Legislature. In determining legislative intent, consideration may be given to such matters as the objects sought to be obtained, the statute's connection with other related statutes, and the consequences of a particular construction. State v. Moen, 441 N.W.2d 643 (N.D. 1989); N.D.C.C. § 1-02-39.

As noted previously, it is apparent that the North Dakota Legislature has established a uniform system of enforcement of traffic laws and procedures for disposition of alleged violations of those laws. As a part of this system, the Legislature has provided a procedure for the speedy release of offenders and disposition of noncriminal traffic offenses while retaining the ability to impose criminal and administrative sanctions upon those persons who fail to comply with the release and disposition procedures.

N.D.C.C. § 39-06.1-02 envisions the application of the notice and release procedures of both N.D.C.C. §§ 39-07-07 and 39-07-08. N.D.C.C. § 39-06.1-02, which is applicable to noncriminal traffic violation procedures, provides, in part:

39-06.1-02. Traffic violations noncriminal - Exceptions - Procedures. Any person cited, in accordance with the provisions of sections 39-07-07 and 39-07-08, for a traffic violation under state law or municipal ordinance, other than an offense listed in section 39-06.1-05, shall be deemed to be charged with a noncriminal offense and may appear before the designated official and pay the statutory fee for the violation charged at or prior to the time scheduled for a hearing, or, if he has posted bond in person,

as provided by section 39-07-07, or by mail, he may forfeit bond by not appearing at the designated time.

N.D.C.C. § 39-06.1-04 established a clear legislative intent to impose criminal sanctions upon persons who have signed a promise to appear and who later failed to appear at the time designated in the summons or notice without paying the statutory fee or posting and forfeiting bond. N.D.C.C. § 39-06.1-04 is specifically applicable to noncriminal traffic offenses. The signing of a promise to appear is a condition precedent to criminal liability under this section. If no written promise to appear was required for noncriminal traffic offenses, the criminal penalty of this section would be unenforceable and no effect would be given to this specific sanction for nonappearance. In addition, N.D.C.C. § 39-06-32(6) authorizes the director of the Department of Transportation to suspend the license of an operator if it can be established by a preponderance of the evidence that an offender failed to appear in court or post and forfeit bond after signing a promise to appear in violation of N.D.C.C. § 39-06.1-04. As in the case of the criminal penalty, the administrative sanction would be unenforceable if the violator would not be required to execute a promise to appear for a noncriminal traffic offense. Such a construction would lead to absurd and ludicrous results, a construction which should be avoided.

If a statute is ambiguous, legislative history may be considered in determining the legislative intent. N.D.C.C. § 1-02-39. As noted previously the underlined portion of N.D.C.C. § 39-07-07, as set forth earlier in this letter, was adopted by the 1981 Legislative Assembly as House Bill No. 1595. A review of the legislative history discloses no expression of intent that a promise to appear would not continue to be required for the release of a violator of noncriminal traffic laws of this state. No amendments were proposed which would delete the requirement that a signed promise to appear be a condition precedent to the criminal penalties of N.D.C.C. § 39-06.1-04.

Further review of the legislative history of House Bill 1595 discloses no intent to modify the release and retention of custody provisions pertaining to a promise to appear in N.D.C.C. § 39-07-08. Rather, the amendments to N.D.C.C. § 39-07-07 were intended to only establish a method or mode of payment of noncriminal traffic fines or bond. These amendments required that the halting officer provide the alleged violator with an envelope to mail the fee or bond rather than requiring, in all cases, the violator to travel to the police station or courthouse for the purpose of immediately paying the fee or bond. During hearings on House Bill 1595, testimony was received by the Senate Transportation Committee that House Bill 1595 was a "public relations bill" by providing a uniform system for the use of mailing a fee or bond to a court, to make it easier for a violator who did not have the cash at the time, and to reduce court congestion. Minutes of the Senate Transportation Committee concerning House Bill 1595, March 6, 1981.

Representative Rued, who was a cosponsor of the bill, also testified before the House Transportation Committee on February 5, 1981. In response to a question from

Representative Heigaard, Representative Rued stated that House Bill 1595 had nothing to do with a promise to appear on a summons by stating:

Representative Heigaard: Should be a provision of promise to appear on summons.

Rep. Rued: That has nothing to do with that part of the law. It is the manner in which the bond is posted.

Minutes of the House Transportation Committee concerning House Bill 1595, February 5, 1981.

Based upon a review of the legislative history of House Bill 1595 amending N.D.C.C. § 39-07-07 and reading all related statutes together, I conclude that the amendments to N.D.C.C. § 39-07-07 were neither intended nor have the effect of modifying the release of noncriminal traffic offenders pursuant to the procedures established in N.D.C.C. § 39-07-08. If the alleged violator of a noncriminal traffic offense agrees to sign a promise to appear in accordance with N.D.C.C. § 39-07-08, the alleged violator must be released, cannot be required to travel with the halting officer to post bond, and must be given an envelope and other information as required by N.D.C.C. § 39-07-07 by the halting officer. If the alleged violator refuses to sign the promise to appear, the halting officer must take the alleged violator immediately before a magistrate in accordance with N.D.C.C. § 39-07-08.

You have also inquired whether the city of Fargo has the authority to adopt an ordinance substantially in accordance with the provisions of N.D.C.C. § 39-07-08 authorizing the release from custody of a person who signs a promise to appear but mandating that a person who refuses to sign such a promise be immediately taken by the officer before a magistrate. N.D.C.C. § 40-05-02(28) authorizes a city to enact an ordinance equivalent to N.D.C.C. § 39-06.1-04, but the penalty assessed may not exceed that authorized by N.D.C.C. § 40-05-06. As noted previously, N.D.C.C. § 39-06.1-04 requires, as a condition precedent to criminal liability, that the offender sign a promise to appear. N.D.C.C. § 40-05-01(1) authorizes a city to adopt such ordinances as may be proper and necessary to carry into effect powers granted to the municipality or as the general welfare of the municipality may require. Similar powers are granted to home rule cities in N.D.C.C. § 40-05.1-06.

The uniform system of enforcement of traffic laws and procedures for disposition of alleged violations of those laws established by statute is also applicable to municipal enforcement and disposition procedures. N.D.C.C. § 29-05-31, which establishes the uniform traffic complaint and summons containing a provision for a written promise to appear, is specifically authorized for use in cases involving violation of statutes or ordinances relating to the operation or use motor vehicles. N.D.C.C. §§ 39-06.1-02 and 39-06.1-03 specifically establish procedures for the disposition of noncriminal traffic offenses which are a violation

of state law or municipal ordinances. N.D.C.C. § 39-06.1-04, in addition to the criminal penalties for nonappearance of an offender, imposes requirements upon municipal officials to report the nonappearance of an offender for a noncriminal traffic offense and deems a failure to appear without just cause at a hearing as an admission of the commission of the violation.

The adoption of an ordinance which is substantially in accordance with N.D.C.C. § 39-07-08 is consistent with the legislative intent to establish a uniform system for the enforcement of noncriminal traffic law and the disposition of those offenses. By authorizing the adoption of an ordinance in conformance with N.D.C.C. § 39-06.1-04, the Legislature has clearly indicated its intent that cities, through the ordinance process, have the authority to impose sanctions for the nonappearance of a noncriminal traffic offender at the time and place designated in the summons or notice. As noted previously, if there is no signed promise to appear, there may be no criminal liability under N.D.C.C. § 39-06.1-04 or equivalent ordinance. Therefore, the procedures for obtaining a promise to appear as established in N.D.C.C. § 39-07-08 are an integral part of the legislative design to establish a uniform system of traffic enforcement and to empower cities to participate in that system.

In my opinion, enactment of an ordinance in compliance with N.D.C.C. § 39-07-08 is within the city's power and authority.

Since this does involve a conflict between statutes, it is an area which should be addressed and resolved by the Legislature.

Sincerely,

Nicholas J. Spaeth

rpb/vkk