

N.D.A.G. Letter to Freed (Nov. 27, 1989)

November 27, 1989

Mr. Robert A. Freed
Assistant State's Attorney
Stutsman County Courthouse
511 Second Avenue SE
Jamestown, ND 58401

Dear Mr. Freed:

Thank you for your letter of October 13, 1989, wherein you raised a number of questions concerning the application of North Dakota Century Code §§ 39-12-02, 39-12-03, and 39-12-05.3, all relating to the legal weight limit of a motor vehicle.

For purposes of N.D.C.C. tit. 39, the word "highway" is defined as "the entire width between the boundary lines of every way publicly maintained when any part thereof is opened to public vehicular travel." N.D.C.C. § 39-01-01(24). Thus, N.D.C.C. ch. 39-12 applies to county highways.

N.D.C.C. § 39-12-05.3(1) establishes two criteria to determine the legal operating weight of a vehicle which is not on the interstate highway system. The vehicle must meet the requirements relative to the tire width, wheel load, and axle spacing. N.D.C.C. § 39-12-05.3(1). Having met those requirements, the vehicle must comply with subsection 2 of N.D.C.C. § 39-12-05.3 which limits the operating weight of the vehicle according to a statutory formula. The limitations on the weight of a vehicle established by N.D.C.C. § 39-12-05.3 provide a general weight limitation for all vehicles being operated on the highways in this state. The board of county commissioners is not required to take any action under the provisions of N.D.C.C. § 39-12-03 to effectuate the general vehicle weight established by N.D.C.C. § 39-12-05.3.

N.D.C.C. § 39-12-03 allows the county commissioners to reduce the legal operating weight of vehicles on specific sections of a highway. The objective of the limitation is to prevent damage to the highways from a vehicle that meets the legal weight under N.D.C.C. § 39-12-05.3. To invoke the provisions of N.D.C.C. § 39-12-03, an ordinance or resolution must be enacted. The highway subject to the vehicle weight limitation must also be signed accordingly. The purpose of the signing is to advise the operator of a vehicle that is otherwise of legal weight, that operation on the signed segment of the highway is not permitted.

The provisions of N.D.C.C. § 39-12-03 do not have any application to the issuance of a permit under N.D.C.C. §§ 39-12-02 or 39-12-05.3(4).

Both N.D.C.C. 39-12-02 and 39-12-05.3(4) are jurisdictional, granting the board of

county commissioners the authority to issue the permits. Neither addresses the manner in which the permits are to be physically issued. Once a board of county commissioners describes how and when permits are to be issued, issuance is a ministerial matter which may be delegated to an appropriate county office.

I trust that this information will be of assistance to you.

Sincerely,

Nicholas J. Spaeth

vkk