

OPINION
64-189

December 2, 1964 (OPINION)

Mr. Wm. L. Paulson

Barnes County State's Attorney

RE: Motor Vehicles - Offenses - Report to Highway Commissioner

This is in reply to your letter of November 20, 1964, in regard to reporting of convictions of motor vehicle offenses by County Judges to the Highway Commissioner.

You inform us that a defendant is being charged with violation of section 39-08-18 of the North Dakota Century Code to-wit having in his possession while in an automobile any bottle or receptacle containing alcoholic beverages which has been opened or the contents of which have been partially consumed. The facts you give indicate that the individual concerned was sitting in the rear seat of the vehicle, was not the owner of the vehicle, and that you have no proof that he operated the vehicle on that day. The defendant apparently from this position handed the open receptacle to the State Highway Patrolman upon request.

The question you present is whether the County Justice should forward the record of conviction to the Highway Commissioner pursuant to section 39-06-29 of the North Dakota Century Code. (We assume for the sake of this opinion that the defendant is a resident of the State of North Dakota and that therefore section 39-06-26 of the Supplement to the North Dakota Century Code would not be applicable).

We might also comment in passing that it is the policy of this office not to express an opinion as such on matters currently pending before a court. The matter you present here would seem to be a post-conviction administrative responsibility of the court rather than a part of the more direct judicial process; nevertheless we hope that the opinion subsequently expressed herein might be considered in the nature of a brief amicus curiae rather than a "ruling" of this office.

We note that section 39-06-29 of the North Dakota Century Code provides:

"COURTS TO REPORT RECORDS OF CERTAIN CONVICTIONS. Every court or juvenile commissioner having jurisdiction over offenses committed under this chapter or any other law of this state or municipal ordinance regulating the operation of motor vehicles on highways, shall forward to the commissioner a record of conviction of any person in said court, or a report of the action of the juvenile court in the case of a juvenile, for a violation of any of said laws other than regulations governing standing or parking, and may recommend the suspension of the operator's license or permit of the person so convicted or

reported."

The offense you describe does not in our opinion constitute an offense committed under chapter 39-06 of the North Dakota Century Code or of any other law of this state or municipal ordinance regulating the operation of motor vehicles on highways. (It very probably is "any offense under the motor vehicle laws of this state" under section 39-06-26 of the Supplement to the North Dakota Century Code). It is therefore our opinion that section 39-06-29 of the North Dakota Century Code does not require reporting of this conviction.

We might mention in passing that every magistrate in this state is required by section 39-07-11 of the Supplement to the North Dakota Century Code to keep a full record of every case in which a person is charged with a violation of any provision of chapters 39-08 through 39-13 and chapter 39-21 of the North Dakota Century Code. Insofar as this is therefore, for proper purposes a "public record", it is at least an arguable point whether any "rights of privacy" or to use your term "personal rights" of the defendant are involved in turning copies of same over to the Highway Commissioner.

The question of a "right of privacy" is an intriguing one due in part to extensive litigation in some parts of the United States in regard to same. The only authority in this state in that field that we are familiar with the second sentence of section 9 of the North Dakota Constitution to-wit:

"* * * In all civil and criminal trials for the libel the truth may be given in evidence, and shall be sufficient defense when the matter is published with good motives and for justifiable ends; and the jury shall have the same power of giving a general verdict as in other cases; * * *"

We are certain that the good motives and justifiable ends are firmly established where the case falls squarely under the above quoted section 39-06-29, or the above cited section 39-06-26 of the North Dakota Century Code as amended to date. Such good motives and justifiable ends might conceivable be open to some question where the case would not fall within either of said statutes.

HELGI JOHANNESON

Attorney General