

LETTER OPINION
2000-L-162

November 28, 2000

Mr. Al Baker
Office of the City Prosecutor
PO Box 150
Fargo, ND 58107-0150

Dear Mr. Baker:

Thank you for your letter concerning whether a driver with a valid North Dakota driver's license can be convicted of driving under suspension or revocation if, while driving in North Dakota, the driver's privilege to drive has been suspended or revoked in another state.

N.D.C.C. § 39-06-42(1) sets forth the criminal penalty for driving a motor vehicle within this state while the operator's license or privilege to operate a motor vehicle has been suspended or revoked.

The North Dakota Court of Appeals in State v. Woehlhoff, 515 N.W.2d 192 (N.D. App. 1994), set forth the essential elements of a violation of N.D.C.C. § 39-06-42. These elements are listed as:

1. The person charged drove a motor vehicle in this state on a highway or on a public or private area to which the public had a right of access for vehicular use; and
2. When the person drove, that person's privilege to drive was suspended or revoked.

In the vast majority of cases, I would expect that a driving under suspension or revocation offense would have, as its basis, the fact that the driver of a motor vehicle had his or her license or privilege to operate a motor vehicle in this state suspended or revoked by action of the director of the North Dakota Department of Transportation. In these instances, the offender would be subject to an administrative order of the Department of Transportation director prohibiting operation of a motor vehicle in this state.

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Your question addresses the situation wherein a driver possesses a valid North Dakota driver's license to operate a motor vehicle within this state. This license has not been suspended or revoked by the director of the North Dakota Department of Transportation, but this driver's privilege to operate a motor vehicle in another state has been suspended or revoked in that state.

Although the essential elements of an N.D.C.C. § 39-06-42 violation as set forth in Woehlhoff may appear to be clear and unambiguous, the actual language of that statutory provision may be ambiguous under the factual scenario you present. Subsection 1 of N.D.C.C. § 39-06-42 provides:

Except as provided in chapters 39-16 and 39-16.1 and section 39-06.1-11, any person who drives a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state while that person's license or privilege so to do is suspended or revoked in any jurisdiction is guilty of a class B misdemeanor for the first, second, or third offense within a five-year period. Any subsequent offense within the same five-year period is a class A misdemeanor.

The prohibition for operating a vehicle in this state applies to the license or privilege to operate a motor vehicle which has been suspended or revoked "in any jurisdiction." In other words, subsection 1 of N.D.C.C. § 39-06-42 could be read to allow an operator of a motor vehicle in the state of North Dakota who possesses a valid, unsuspended, and unrevoked North Dakota license, to be charged with this offense based upon an administrative order of another state suspending or revoking a privilege to operate a motor vehicle in that state.

The Legislature has established a detailed statutory framework which is to be utilized before a North Dakota resident's license, or a nonresident's privilege to operate a motor vehicle in this state, may be suspended or revoked. These statutory provisions implement the constitutional due process considerations and requirements of notice and opportunity for a hearing, except in emergency situations, before a driver's license, and the privilege to operate a motor vehicle attached thereto, may be terminated. See, Bell v. Burson, 402 U.S. 535 (1971).

The North Dakota Supreme Court has recognized that a driver's license is a protectable property interest to which the constitutional guarantee of procedural due process applies. As a result, notice and an opportunity for a hearing must be provided to comply with those due

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process requirements. Kobilansky v. Liffbrig, 358 N.W.2d 781 (N.D. 1984); State v. Sinner, 207 N.W.2d 495 (N.D. 1973).

To insure compliance with these procedural due process requirements, the Legislature has limited, except in special circumstances, the authority of the director of the Department of Transportation to suspend the license of an operator only after notice and opportunity for a hearing. See N.D.C.C. §§ 39-06-32, 39-06.1-10. In addition, specific statutory provisions establish the procedures for providing the notice and opportunity for hearing prior to the adverse license action. N.D.C.C. § 39-06-33.

N.D.C.C. § 39-06-27 also sets forth the authority of the director of the Department of Transportation to suspend or revoke the North Dakota license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice of a conviction of the driver in a tribal court or in another state of an offense which, if committed in this state, would be grounds for the suspension or revocation of the license of an operator. N.D.C.C. § 39-06-27 provides:

The director may suspend or revoke the license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice of the conviction of that person in a tribal court or in another state of an offense therein which, if committed in this state, would be grounds for the suspension or revocation of the license of an operator. The director may act on a report of a conviction in tribal court received from any tribal law enforcement agency. This section may not be construed as authorizing the assessment of points against a resident driver's record in accordance with chapter 39-06.1, except upon conviction of a resident driver for a criminal offense in a tribal court or in another state which is equivalent to one of those offenses defined in section 39-06.1-05. A suspension or revocation may not be imposed for convictions for driving under suspension or revocation on an Indian reservation or in another state if a valid North Dakota license or permit was in effect at the time of the violation. For purposes of this section, originals, photostatic copies, or electronic transmissions of the records of the driver's licensing or other authority of the other jurisdiction are sufficient evidence whether or not they are certified copies.

Upon receipt of a certification that the operating privileges of a resident of this state have been suspended

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or revoked on an Indian reservation or in any other state pursuant to a law providing for the suspension or revocation for failure to deposit security for the payment of judgments arising out of a motor vehicle accident, under circumstances that would require the director to suspend a nonresident's operating privileges had the accident occurred in this state, the director shall suspend the license of the resident if the resident was the driver of a motor vehicle involved in the accident. The suspension continues until the resident furnishes evidence satisfactory to the director of the person's compliance with the laws of the Indian reservation or the other state relating to the deposit of security or payment of a judgment arising out of a motor vehicle accident, to the extent that compliance would be required if the accident had occurred in this state.

N.D.C.C. § 39-06-27 authorizes the suspension of a North Dakota operator's license upon conviction of the described offenses in another state or in tribal court. It should be noted, however, that this authority is limited to authorizing the assessment of points only for criminal traffic offense convictions (equivalent to N.D.C.C. § 39-06.1-05) in the tribal court or other state and not for noncriminal traffic adjudications. In addition, the suspension or revocation of the license may not be imposed for convictions for driving under suspension or revocation on an Indian Reservation or in another state if a valid North Dakota license or permit was in effect at the time of the violation.

If subsection 1 of N.D.C.C. § 39-06-42 interpreted broadly to allow the charging of a driver holding a North Dakota license with the offense of driving under suspension or revocation solely upon an out-of-state or tribal court order suspending or revoking privileges within the reservation or other state's boundaries without a corresponding order from the director of the North Dakota Department of Transportation, due process would be impacted and statutory conflicts would be created.

To conclude that an order of a tribal court or order of another state prohibiting vehicle operation within the reservation or other state boundaries also terminates a North Dakota driver's license results in the suspension or revocation of the North Dakota license within North Dakota without action of the director of the North Dakota Department of Transportation. In other words, the North Dakota driver's license held by a North Dakota resident would automatically be suspended or revoked upon the action of a tribal court or another state, and rights

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provided to the North Dakota driver under N.D.C.C. §§ 39-06-27 and 39-06-33 would be rendered ineffective.

The question then is did the Legislature intend this result when it enacted its 1991 amendment to N.D.C.C. § 39-06-42(1) adding the language "in any jurisdiction"? The two possible interpretations of the Legislature's action renders the statute ambiguous. Kallhoff v. ND Workers Comp. Bureau, 484 N.W.2d 510, 512 (N.D. 1992).

Resolution of the statutory and constitutional conflicts will be subject to basic rules of statutory interpretation. It is presumed that compliance with the constitutions of this state and of the United States and a just and reasonable result feasible of execution is intended. N.D.C.C. § 1-02-38. The statute must be construed to avoid ludicrous or absurd results and all sections of the statute must be construed to have meaning because the law neither does nor requires idle acts. Holen v. Hjelle, 396 N.W.2d 290 (N.D. 1986).

N.D.C.C. § 39-06-27 specifically addresses the situation when a license of a resident of this state is suspended or revoked upon conviction of an offense, or suspension or revocation of driving privileges, in a tribal court or in another state. It is presumed that an entire statute is intended to be effective. N.D.C.C. § 1-02-38. Statutory provisions, if conflicting, should be construed to give effect to both and statutes relating to the same general subject matter should be given meaning without rendering one or the other useless. Holen v. Hjelle. To meet these basic rules and standards of interpretation and the dictates of constitutional due process, I cannot conclude that the term "in any jurisdiction" as found in subsection 1 of N.D.C.C. § 39-06-42 authorizes the prosecution of a person with a valid North Dakota driver's license for operating a motor vehicle within this state for the offense of driving under suspension or revocation solely upon a tribal court or out-of-state order without an order of suspension or revocation of that license issued by the director of the North Dakota Department of Transportation. To conclude otherwise would render the notice and hearing provisions of N.D.C.C. § 39-06-27 useless and of no effect.

The primary objective of statutory construction is to ascertain the legislative intent. Extrinsic aids to statutory interpretation may be used for ambiguous statutes. Kallhoff v. N.D. Workers Comp. Bureau, 484 N.W.2d at 512. N.D.C.C. § 1-02-39. The "in any jurisdiction" language in subsection 1 of N.D.C.C. § 39-06-42 was added to that section by House Bill 1134 during the 1991 legislative session. In written testimony presented to the House Transportation Committee, Colonel Brian C. Berg, superintendent of the North Dakota Highway Patrol, specifically noted that the addition of this language to the

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driving under suspension or revocation law would permit persons who have had their driver's licenses suspended or revoked in any jurisdiction to also be charged with driving under suspension or revocation when driving in this state. Colonel Berg stated that, without the amendment, an out-of-state driver who was under suspension or revocation in that person's state could be cited for only the offense of "no driver's license" in this state, but a North Dakota driver who is under suspension in this state would be charged with driving while under suspension. Hearing on H.B. 1134 Before the House Comm. on Transportation, 1991 N.D. Leg. (January 18, 1991) (written testimony of Brian C. Berg).

It is apparent from the legislative history that the addition of the "in any jurisdiction" language to N.D.C.C. § 39-06-42(1) was intended to cover the prosecution of non-North Dakota licensed drivers who may be stopped in North Dakota for operating a motor vehicle on our highways when that person's license or privilege to operate a motor vehicle has been suspended or revoked in that person's own state. There is no indication that the Legislature intended to bypass the constitution and statutory requirements for a notice and opportunity for a hearing before North Dakota licenses or driving privileges are suspended or revoked and to implement, in their place, an automatic suspension or revocation of North Dakota license or driving privileges in this state without notice and opportunity for hearing.

N.D.C.C. § 39-06-27 control when a North Dakota resident's operator's license may be suspended or revoked upon conviction, suspension or revocation by a tribal court or in another state. It is my opinion that, for a North Dakota resident operating a motor vehicle within the state of North Dakota, the offense of driving under suspension or revocation as found in N.D.C.C. § 39-06-42 will be chargeable only if that North Dakota resident has lost his or her driver's license or privileges to operate a motor vehicle within this state by order of the director of the North Dakota Department of Transportation. Although the order of the tribal court or of another state may provide a basis for the director to take action against the North Dakota resident's driver's license and operating privileges, such orders do not provide a independent ground upon which to establish a violation of N.D.C.C. § 39-06-42 when that person operates a motor vehicle within the State of North Dakota.

Sincerely,

Heidi Heitkamp

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Attorney General

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