

LETTER OPINION
96-L-144

August 30, 1996

Ms. Jeanne McLean Behrens
Bottineau County State's Attorney
314 W 5th St
Bottineau, ND 58318

Dear Ms. Behrens:

Thank you for your August 13, 1996, letter concerning the citation of an individual for operating an overweight truck at a United States-Canada border station.

You ask whether the individual was operating an overweight vehicle and "damaging a North Dakota road" if he had not yet cleared customs and had not yet been admitted to North Dakota even though he was on American soil; whether the Highway Patrol and state courts have jurisdiction on the federal land just prior to the border crossing station; and whether it is a defense, assuming the state has jurisdiction, that the operator claimed he was going to divide his load by disconnecting one of two trailers after he had cleared customs.

My response to the second question, pertaining to jurisdiction, may also resolve your first question. A state generally has complete jurisdiction over the lands within its exterior boundaries. The United States can obtain exclusive jurisdiction over federal land within the state by one of three ways:

1. By reservation of exclusive federal jurisdiction upon the admission of a state into the union with affirmation by the state;
2. By state statute consenting to the purchase of land by the United States for one or more of the purposes enumerated in article I, § 8, cl. 17 of United States Constitution; and
3. By a cession of jurisdiction to the United States by an individual state after statehood.

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State v. Galvan-Cardenas, 799 P.2d 19, 21 (Ariz. Ct. App. 1990).

Mere purchase or acquisition by the United States of land within a state for federal purposes does not per se oust the state of sovereignty over such land. It is the manner in which the property is transferred which is determinative. Absent a showing that the Federal government clearly intended to exercise sole jurisdiction over a particular land area within a state, exclusive federal jurisdiction occurs only when the state cedes the land and jurisdiction over it to the United States government and the burden of proving this . . . is upon [the] defendant.

People v. Fisher, 97 A.D.2d 651, 652, 469 N.Y.S.2d 187, 189 (N.Y. App. Div. 1983) (citations omitted), citing Bowen v. Johnston, 306 U.S. 19 (1939) and Fort Leavenworth Railroad Company v. Lowe, 114 U.S. 525 (1885). See also State v. Quick, 806 P.2d 907 (Ariz. Ct. App. 1991) (defendant has burden of proof); State v. Galvan-Cardenas; 799 P.2d at 22 (same).

N.D.C.C. § 54-01-06 is consistent with these basic principles of jurisdiction. That section provides:

The sovereignty and jurisdiction of this state extend to all places within its boundaries as established by the constitution, but the extent of such jurisdiction over places that have been or may be ceded to, or purchased or condemned by, the United States, is qualified by the terms of such cession or the laws under which such purchase or condemnation has been or may be made.

A review of state statutory provisions fails to disclose any ceding of this state's jurisdiction over property found within the exterior boundaries of North Dakota and which may comprise an international border crossing. Unless a person cited with an offense at that border crossing can establish that the manner in which the United States government may have obtained ownership or control of that property divested North Dakota of jurisdiction, this state will retain jurisdiction over such property within its state's exterior boundaries.

It appears that Congress also intended that states retain jurisdiction over international border crossings. 8 U.S.C. § 1358 provides:

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The officers in charge of the various immigrant stations shall admit therein the proper State and local officers charged with the enforcement of the laws of the State or Territory of the United States in which any such immigrant station is located in order that such State and local officers may preserve the peace and make arrests for crimes under the laws of the States and Territories. For the purpose of this section the jurisdiction of such State and local officers and of the State and local courts shall extend over such immigrant stations.

This section specifically provides that state courts retain jurisdiction over offenses committed at United States border stations. State v. Armstrong, 533 A.2d 1183 (Vt. 1987); State v. Bradley, 719 P.2d 546 (Wash. 1986). A person need not be officially admitted into the United States or the State of North Dakota for this section to apply. See People v. Materon, 107 A.2d 408, 412, 487 N.Y.S.2d 334, 338 (N.Y. App. Div. 1985).

Absent a showing by the person cited with the offense that the State of North Dakota does not have jurisdiction at the border crossing and that the federal government has specifically assumed exclusive jurisdiction, it is my opinion that both the Highway Patrol and North Dakota state courts would retain jurisdiction over offenses occurring at the border crossing, assuming that the offense occurred within the exterior boundaries of the state of North Dakota.

Assuming that the North Dakota state courts have jurisdiction over the cited offense, whether the operator of the truck committed the offense even though he had not cleared customs and not been admitted to North Dakota is a question of fact. N.D.C.C. §§ 39-12-05.3 and 39-12-09 do not distinguish how far a driver of an overweight vehicle must enter North Dakota to be subject to those provisions. Both sections prohibit the operation of an overweight vehicle on a "highway." The term "highway" is defined in N.D.C.C. § 39-01-01(24). A person operating an overweight vehicle on a highway within the exterior boundaries of North Dakota will be subject to the statutory provisions. Whether the vehicle was in North Dakota, on a highway, and was overweight would be matters of fact to be addressed at a trial.

You also ask whether it is a defense to the overweight offense that the operator claimed that he was going to divide his load at the border by unhitching one of two trailers after he had cleared customs and would come back for it later.

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A review of N.D.C.C. ch. 39-12 fails to disclose a defense to a violation of N.D.C.C. §§ 39-12-05.3 and 39-12-09 based on what the operator intended to do. N.D.C.C. §§ 39-12-02 and 39-12-05.3(4) authorize the issuance of permits to exceed weight limitations. In addition, N.D.C.C. § 39-12-05.3(3) allows exemptions to be given to the operator of an overweight vehicle. Therefore, any defenses would be factual defenses concerning whether the operator drove or moved, or knowingly permitted or caused to be driven, an overweight vehicle on a highway.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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