

## **N.D.A.G. Letter to Mattson (April 16, 1992)**

April 16, 1992

Mr. Doug Mattson  
Ward County State's Attorney  
Ward County Courthouse  
Minot, ND 58701

Dear Mr. Mattson:

Thank you for your March 23, 1992, letter asking if a court has the authority to order the North Dakota Department of Transportation to suspend a person's driver's license as part of the sentence given under North Dakota Century Code § 19-03.1-30.

After asking the question, you elaborated on the jurisdictional aspect of whether the authority to suspend a person's driver's license was vested in the NDDOT or vested currently with that agency and the courts.

As originally conceived, the authority to revoke an individual's driver's license was vested in the former office of the highway commissioner and could be exercised for certain specified convictions. The same office could suspend an individual's driver's license for other traffic offenses for which there was a conviction or sufficient reason to believe that certain other offenses had occurred. 1935 N.D. Sess. Laws ch. 175, §§ 10 and 11. In 1943, the authority to suspend or revoke an individual's driver's license was removed from the office of the highway commissioner and vested in the judge of the court in which the conviction occurred. 1943 N.D. Sess. Laws ch. 146, § 1. The latter session law was ultimately codified as section 39-0610, North Dakota Revised Code, 1943.

Chapter 39-06 of N.D.R.C., 1943 was amended extensively in the 1955 legislative session. As part of those amendments, the provisions of section 39-0610 were incorporated in to sections 39-0631 and 39-0632, N.D.R.C. 1943. Significantly, both of the new statutes deleted the judge's authority to suspend or revoke an individual's driver's license and returned that authority to the office of the highway commissioner. This expression of jurisdictional authority remains in place today in N.D.C.C. §§ 39-06-31 and 39-06-32. Under N.D.C.C. § 39-06-31, the legislature has recognized that the court does have authority to recommend a period of revocation for more than one year.

Further, the legislature has indicated that the primary responsibility for the execution of the various laws of N.D.C.C. tit. 39 is vested in the officials charged with the administration of those laws. N.D.C.C. § 39-01-01.1. This statute addresses the responsibility of state officials and not courts, which, in conjunction with the prior discussion, leads me to the conclusion that the authority to revoke or suspend a person's driver's license is vested in the Director of NDDOT and not in the judicial branch of the government.

The court may, however, impose terms and conditions of probation under N.D.C.C. § 19-03.1-30. Although this section does not specifically set forth what terms and conditions of probation may be imposed upon a person receiving a conditional discharge by a court, our Supreme Court has concluded that a sentencing court has broad discretion in setting the conditions of probation. State v. Sahr, 470 N.W.2d 185 (N.D. 1991). The terms and conditions of probation are not without limitation. N.D.C.C. § 12.1-32-07 authorizes a court to impose such conditions of probation as it deems appropriate when imposing probation in conjunction with a deferred imposition of sentence.

A conditional discharge imposed pursuant to N.D.C.C. § 19-03.1-30 is equivalent to a deferred imposition of sentence authorized in N.D.C.C. § 12.1-32-02(4). Whether the court defers imposition of sentence or grants a conditional discharge, in each instance, the court will "place" the defendant on probation. The court may also impose "terms and conditions" of probation upon the defendant in a conditional discharge pursuant to N.D.C.C. § 19-03.1-30 and may impose one or more conditions of probation under the authority of N.D.C.C. § 12.1-32-07.

Because of the close relationship between a conditional discharge and deferred imposition of sentence, cases construing the authority of a court under N.D.C.C. § 12.1-32-07 to impose conditions of probation and any limitations upon that authority are helpful in determining a court's authority when granting a conditional discharge under N.D.C.C. § 19-03.1-30.

A court has a responsibility to regulate activities of a person on probation to help that person's rehabilitation and to guard against continued criminal behavior. State v. Perbix, 331 N.W.2d 14 (N.D. 1983). N.D.C.C. § 12.1-32-07(2) limits the imposition of conditions of probation only to those conditions "such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life or to assist the defendant to do so." Although N.D.C.C. § 19-03.1-30 is not mentioned in N.D.C.C. § 12.1-32-07, the latter section may also be applicable to the imposition of probation upon the granting of a conditional discharge pursuant to section 19-03.1-30. In State v. Saavedra, 406 N.W.2d 667 (N.D. 1987), the court concluded that N.D.C.C. § 12.1-32-07 applied to a deferred imposition of sentence imposed in accordance with prior statutory provisions found in N.D.C.C. § 12-53-14. Although N.D.C.C. § 12.1-32-07, prior to legislative amendments, applied when a defendant was "sentenced to probation," the court concluded that this section applied to deferred imposition and suspended execution of sentences which were imposed pursuant to N.D.C.C. ch. 12-53.

I see no intent of the Legislative Assembly in the enactments of N.D.C.C. § 19-03.1-30 and N.D.C.C. ch. 12.1-32 to conclude that the respective statutory provisions are mutually exclusive. Rather, placing a person on probation pursuant to N.D.C.C. § 19-03.1-30 would not prohibit a court from imposing conditions of probation in accordance with N.D.C.C. § 12.1-32-07. This conclusion is necessary to ensure uniformity in application of the probation process for both a conditional discharge and a deferred imposition of sentence and to allow definite guidelines for the imposition of probation.

As stated previously, a court has broad discretion in setting conditions of probation. The list of conditions of probation in N.D.C.C. § 12.1-23-07(3) is not exclusive. Imposition of conditions is a matter of judicial discretion allowing a judge to tailor conditions to meet particular facts and circumstances in any given case. State v. Saavedra. This process of tailoring probation conditions in light of the court's broad discretion in these matters would permit a court to impose as a condition of probation that a person not operate a motor vehicle or that operation of a motor vehicle would be limited by the order of the court. This denial or limitation on the operation of a motor vehicle would not be imposed, however, by virtue of a suspension or revocation order of the director of the Department of Transportation but, rather, would be imposed as a condition of probation by the court.

This, like other probation conditions, may be subject to the limitation that the condition be reasonably necessary to ensure that the defendant will lead a law-abiding life or to assist the defendant to do so. The condition imposed should bear some relationship to the objectives of rehabilitating the defendant, regulating his activities, or to guard against continued criminal behavior. Whether restrictions upon a defendant's privilege to operate a motor vehicle can be imposed as conditions of a probation will depend upon the facts and circumstances presented in that specific case.

I hope that I have adequately responded to your inquiry.

Sincerely,

Nicholas J. Spaeth

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