

N.D.A.G. Letter to Berg (Aug. 18, 1987)

August 18, 1987

Col. Brian C. Berg
North Dakota Highway Patrol
State Capitol
Bismarck, ND 58505

Dear Col. Berg:

Thank you for your letter dated August 3, 1987, in which you inquire as to the authority of the highway patrol to adopt trip permit fees and policies by administrative rule.

You are correct in your statement that N.D.C.C. § 39-12-02 authorizes the Highway Patrol to adopt rules governing the movement of oversize and overweight vehicles. In addition, you are also correct that N.D.C.C. § 39-12-04 grants the Highway Patrol the power to adopt reasonable rules for vehicles exempted from weight limitations imposed by law.

Although neither of these statutory sections specifically discuss the rulemaking power for establishing permit fees, each of those sections authorize an appropriate charge or fee to be levied for the issuance of a permit. In each of these sections, it is required that an appropriate permit fee or charge be paid prior to the issuance of the permit.

Since the permit fee is required by law and the North Dakota Highway Patrol has been vested with the authority to adopt rules to carry out the provisions of N.D.C.C. §§ 39-12-02 and 39-12-04, I conclude that your rulemaking power includes the authority to adopt the appropriate charge or permit fees required by those sections. Since these sections require the charging of a fee for a permit and imposes a duty upon the highway patrol for the collection of those fees, it would be absurd to conclude that your agency would not have authority under your rulemaking power to establish procedures setting that fee and the Process for its collection.

You have also inquired as to whether permit policies under N.D.C.C. §§ 39-12-02 and 39-12-04 should be adopted by administrative rule.

To ensure enforcement of the above-cited statutory sections, it is necessary that the rules governing the movement of oversize and overweight vehicles and those vehicles exempted from width limitations be adopted pursuant to the administrative rule procedure. By granting the Highway Patrol specific authority to adopt these rules, the Legislature has indicated the intent that the permit policies necessary to administer N.D.C.C. §§ 39-12-02 and 39-12-04 be adopted in the rulemaking process.

I trust that I have adequately responded to your inquiry. Should you have any further questions concerning this matter, please feel free to contact me at your convenience.

Sincerely,

Nicholas J. Spaeth

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