Date Issued: March 23, 1984 (AGO 84-16)

Requested by: Gail Hagerty, Burleigh County State's Attorney

- QUESTIONS PRESENTED -

I.

Whether a violation of section 39-21-41.2 of the North Dakota Century Code constitutes an infraction under section 12.1-32-01, N.D.C.C., or a noncriminal traffic violation under section 39-06.1-02, N.D.C.C.

II.

Whether, following a conviction for violation of section 39-21-41.2, N.D.C.C., a fine may be suspended upon proof of acquisition by the defendant of a child restraint system where the violation involved a child of two to four years of age.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that a violation of section 39-21-41.2, N.D.C.C., constitutes a noncriminal traffic violation under section 39-06.1-02, N.D.C.C.

II.

It is my further opinion that, following a conviction for violation of section 39-21-41.2, N.D.C.C., a fine may not be suspended upon proof of acquisition by the defendant of a child restraint system where the violation involved a child of two to four years of age.

- ANALYSES -

I.

Section 39-21-41.2, N.D.C.C., provides, in part as follows:

> 39-21-41.2. CHILD RESTRAINT DEVICES - PENALTY - EVIDENCE.
>
> 1. If a child, not over two years of age, is present in any passenger car that is operated by the child's parent or legal guardian, that passenger car must be equipped with at least one child restraint system for each such child under two years. The child restraint system must at least meet the standards adopted by the United States department of transportation for those systems ›49 CFR 571.213!. While the car is in motion, each such child must be properly secured in the child restraint system in accordance with the manufacturer's instructions. If a child who is at least two and at most four years of age is present in a passenger car, unless properly secured in an approved child restraint system, the child must be buckled in a seatbelt whenever the car is moving. Use of child restraint systems and seatbelts is not required in passenger cars

manufactured before 1966 that have not been equipped with seatbelts.

2. Violation of this section is an infraction and is punishable by a fine not to exceed twenty dollars. The fine may be suspended on showing proof of acquiring a child restraint system complying with this section within one month of the violation.

3. * * *

Section 1-02-38, N.D.C.C., provides the guidance for the determination of legislative intent. That statute provides as follows:

1-02-38. INTENTIONS IN THE ENACTMENT OF STATUTES. In enacting a statute, it is presumed that:

1. Compliance with the constitutions of the state and of the United States is intended.

2. The entire statute is intended to be effective.

3. A just and reasonable result is intended.

4. A result feasible of execution is intended.

5. Public interest is favored over any private interest.

The fact that the language contained in section 39-21-41.2, N.D.C.C., is seemingly clear and without ambiguity does not preclude its interpretation in the light of the other contradictory statutes dealing with the same subject matter. In the case of In Interest of B. L., 301 N.W.2d. 387 (N.D. 1981), the North Dakota Supreme Court said:

> If the language of a statute is of doubtful meaning, or if adherence to the strict letter of the statute would lead to injustice, absurdity, or contradictory provisions, a duty descends upon the courts to ascertain the true meaning. ›Citations omitted.! Thus, in pursuance of the general objective of giving effect to legislative intent, we are not controlled by the literal meaning of the language of the statute, but the spirit or intention of the law prevails over the letter. ›Citations omitted.!

Section 39-21-41.2(2), N.D.C.C., states that the violation is an infraction and is punishable by a fine not to exceed twenty dollars. Under the provisions of section 12.1-32-01(7), N.D.C.C., an infraction is classified as a crime and may be punished by a fine of not more than five hundred dollars. Additionally, that section provides for an enhanced penalty upon conviction of a second infraction.

Section 39-06.1-02, N.D.C.C., defines certain traffic violations as being noncriminal offenses.

39-06.1-02. TRAFFIC VIOLATIONS NONCRIMINAL - EXCEPTIONS - PROCEDURES. Any person cited, in accordance with the provisions of sections 39-07-07 and 39-07-08, for a traffic violation under state law or municipal ordinance, other than an offense listed in section 39-06.1-05, shall be deemed to be charged with a noncriminal offense and may appear before the designated official and pay the statutory fee for the violation charged at or prior to the time scheduled for a hearing, or, if he has posted bond in person, as provided by section 39-07-07, or by mail, he may forfeit bond by not appearing at the designated time. If the person appears at the time scheduled in the citation, he may make a statement in explanation of his action, and the official may at that time, in his discretion, waive, reduce, or suspend the statutory fee or bond, or both. If the person cited follows the foregoing procedures, he shall be deemed to have admitted the violation and to have waived his right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the official designated in the citation shall be identical to the statutory fee established by section 39-06.1-06. Within ten days after forfeiture of bond or payment of the statutory fee, the official having jurisdiction over the violation shall certify to the licensing authority:

1. Admission of the violation; and

2. In speeding violations, whether the speed charged was in excess of the lawful speed limit by more than nine miles ›14.48 kilometers! per hour and the miles ›kilometers! per hour by which the speed limit was exceeded.

This section shall not be construed as allowing a halting officer to receive the statutory fee or bond, unless he is otherwise authorized by law to do so.

Section 39-06.1-02, N.D.C.C., specifically exempts from its provisions those offenses set forth in section 39-06.1-05, N.D.C.C. The offenses listed under the latter section are deemed to be criminal in nature and the administrative processes utilized in the disposition of a nontraffic violation may not be utilized with respect to those offenses. The matters addressed in section 39-06.1-05, N.D.C.C., deal with alcohol-related offenses, reckless driving, negligent homicide, manslaughter, leaving the scene of the accident, and driving while under suspension or revocation. Since the Legislature did not specifically provide that a violation of section 39-21-41.2, N.D.C.C., constitutes a crime under the provisions of section 39-06.1-05, N.D.C.C., confusion exists as to whether the offense is to be treated as a noncriminal traffic violation under the provisions of sections 39-06.1-02 and 39-06.1-03, N.D.C.C.

Previous legislative enactments demonstrate a clear intent to treat violations of chapter 39-21, N.D.C.C., as noncriminal traffic offenses. For example, section 39-06.1-08, N.D.C.C., defines nonmoving violations and sections 39-21-08, 39-21-10, 39-21-11, and 39-21-14, N.D.C.C., are declared to be nonmoving violations. As such, the violations are noncriminal in nature.

Also, under section 39-06.1-09, N.D.C.C., which defines a moving violation, all violations of chapter 39-21, N.D.C.C., with the exception of section 39-21-01, N.D.C.C., and those provisions of chapter 39-21, N.D.C.C., listed in section 39-06.1-08, N.D.C.C., are deemed to be moving violations and, thus, noncriminal in nature.

It is obvious that the Legislature intended to treat a violation of the provisions of chapter 39-21, N.D.C.C., as a noncriminal traffic offense, by expressly including the provisions of that chapter within the statutory scheme of chapter 39-06.1, N.D.C.C.

While the language of section 39-21-41.2, N.D.C.C., may label the act a criminal offense, the Legislature neglected to exclude it from the general law under chapters 39-06.1 and 39-07, N.D.C.C., by declaring the same to be a criminal offense under section 39-06.1-05, N.D.C.C.

II.

The child restraint system, as that phrase is used in the section, is defined by the provisions of 49 CFR 571.213. Thereunder, in Section 4, a child restraint system is defined as "any device, except type I or type II seatbelts, designed for use in a motor vehicle to restrain, seat, or position children who weigh not more than 50 pounds." A type I seatbelt is a lap restraint and a type II seatbelt consists of a lap restraint plus a shoulder harness, as defined in 49 CFR 571.209. Under the statute, the parent or guardian is given the option, in the case of a child who is at least two years and not over four, of either having the child properly secured in a child restraint system or having the child secured by the existing seatbelt restraint. Under this option, the parent or guardian would not be required to have a child restraint system for transporting a child. However, in such an instance, the child must be restrained by the existing seatbelt.

Therefore, the imposition of a monetary sanction would be predicated upon the nonuse of the available seatbelt restraints and not upon the fact that a child restraint system has not been acquired or made available for use by the child. The provision for the waiver of the monetary sanction contemplates the satisfaction of an equipment deficiency, but does not embrace the nonuse of the restraint devices.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts or the applicable provisions of law are amended or repealed.

ROBERT O. WEFALD
Attorney General

Prepared by: Myron E. Bothun
Assistant Attorney General