

LETTER OPINION
96-L-1

January 3, 1996

Col. James M. Hughes
Superintendent
North Dakota Highway Patrol
State Capitol
Bismarck, ND 58505

Dear Col. Hughes:

Thank you for your November 28, 1995, letter in which you raised several questions concerning participation of the North Dakota Highway Patrol in a joint port of entry agreement which may be negotiated pursuant to N.D.C.C. § 39-19-05.

You first asked whether N.D.C.C. § 39-19-05 includes authority for an agreement with Manitoba. N.D.C.C. § 39-19-05 provides:

Agreements for joint operation of ports of entry.

The commissioner may negotiate and enter into bilateral agreements with the appropriate officials of adjacent states, as provided herein:

1. The agreements may provide for the manning and operation of jointly occupied ports of entry, for the collection of highway user fees, registration fees, permit fees, fuel taxes, and any other fees and taxes which may be prescribed by law or rule.
2. The agreements may further provide for the collection of these fees and taxes by either party state at jointly occupied ports of entry before authorization is given for a vehicle to legally operate within that state or jurisdiction, and for the enforcement of safety, size and weight laws, and rules of the respective states.

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Although this section makes reference to agreements with the appropriate officials of "adjacent states", the term "state" includes a province of the Dominion of Canada when used in title 39, unless the context or subject matter otherwise requires. N.D.C.C. § 39-01-01(73). This section provides:

"State" means a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a province of the Dominion of Canada.

Id. The context or subject matter of a joint port of entry does not require that a different definition be used. Based upon the statutory definition of "state", the Director of the North Dakota Department of Transportation has authority to negotiate and enter into bilateral agreements with appropriate officials of a Canadian province which is adjacent to the state of North Dakota.

You also asked several questions pertaining to the activities of state employees in Canada who may be involved in implementation of the bilateral agreements regarding ports of entry. I will separately respond to each of your questions.

You first inquired whether a North Dakota officer would be able to take enforcement action at a Canadian port of entry or whether violators need to be turned over to Canadian officials. This office has no authority to issue an opinion concerning Canadian laws which would be binding upon Canadian officials. Therefore, appropriate Canadian authorities should be consulted regarding the scope of authority North Dakota officers may be granted under a joint port of entry agreement while acting in Canada.

If a person has violated the law within the territorial limits of Canada, only the Canadian courts, rather than the courts of this state, would have authority to act on that violation. I do not know if Canadian law would allow North Dakota troopers to assume law enforcement authority in Canada to enforce Canadian laws. The general rule in this state is that a law enforcement officer possesses the power of a peace officer only within that person's territorial jurisdiction. Davis v. Director, North Dakota Dep't of Transp., 467 N.W.2d 420 (N.D. 1991); State v. Littlewind, 417 N.W.2d 361 (N.D. 1987). Absent Canadian law to the contrary, once a North Dakota trooper leaves North Dakota and enters Canada, that trooper may no longer possess peace officer authority that such officer possessed while in the state of North Dakota. Actions of the trooper in Canada may be taken as a private citizen under applicable Canadian laws and not pursuant to North Dakota peace officer authority.

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The next question was whether North Dakota officers would be covered by workers' compensation while in Manitoba. N.D.C.C. ch. 65-08 discusses extraterritorial coverage of employees of an agent of this state. If an officer is performing tasks on an assigned duty for your department, such officer may be covered under the North Dakota workers' compensation laws if the officer is not covered by a comparable Canadian program. See N.D.C.C. § 65-08-01(1)(d), N.D. Admin. Code § 92-01-02-22. You may wish to talk with workers compensation officials to obtain more specific information regarding coverage of your employees outside of the United States.

You also asked whether weapons may be carried into Canada. I would assume that this question relates to North Dakota Highway Patrol officers who are assigned to assist in the operation of the port of entry. Whether a North Dakota officer will be permitted to possess weapons in Canada will be determined by Canadian law. I would suggest that you contact Canadian law enforcement officials to determine what authority, if any, may be given to North Dakota officers to carry weapons while on official duty within Canada.

Your next question was what per diem rates would be paid in Canada. N.D.C.C. § 44-08-04(4) permits an allowance for meals in Canada which does not exceed 1½ times the current continental United States standard rate for federal employees established by the United States General Services Administration. In addition, the allowance for lodging outside the state must be actual lodging expense. N.D.C.C. § 44-08-04(6). N.D.C.C. § 44-08-04(7) authorizes a department or agency of this state to set a rate for travel expense outside of the state less than those set forth in section 44-08-04.

Your final question was whether North Dakota personnel would have authority to collect fees owing to the state of North Dakota while present at the Canadian joint port of entry. N.D.C.C. § 39-19-05(2) specifies that the bilateral agreement may provide for the collection of fees and taxes by "either party" at jointly occupied ports of entry before authorization is given for a vehicle to legally operate within that state or jurisdiction and for the enforcement of safety, size and weight laws, and rules of respective jurisdictions. The agreement between the province of Manitoba and the director of the Department of Transportation will determine the scope of duties and authority assumed by North Dakota personnel. These agreements could require North Dakota personnel to collect the fees at the entry to the state of North Dakota and to refuse admittance into the state of the vehicles which did not pay the fees. The agreements may also provide that Canadian officials would collect the North Dakota fees

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for payment to this state in accordance with the terms of the agreement.

There is one further issue which must be addressed. N.D.C.C. § 39-19-05 authorizes the director of the Department of Transportation to enter into bilateral agreements with Canadian officials. This section, however, does not authorize you, as superintendent of the North Dakota Highway Patrol to enter into such agreements.

N.D.C.C. § 39-19-05 was adopted by the 1983 Legislative Assembly. 1983 N.D. Sess. Laws ch. 443. At that time, the Truck Regulatory Division was still under the control of the Department of Transportation but, by way of an executive order, much of the day-to-day activities of that division had been assumed by the Highway Patrol. The transfer of the Truck Regulatory Division from the Department of Transportation to the Highway Patrol was accomplished also in 1983 in House Bill 1189. 1983 N.D. Sess. Laws ch. 418.

Many of the responsibilities to be assumed under any bilateral agreement negotiated by the director of the Department of Transportation may be performed by those persons who were formerly within the Truck Regulatory Division of the Department of Transportation. Since the completion of the transfer of this division to the Highway Patrol in 1983, the director of the Department of Transportation may very well not have the authority to commit your agency or other state agencies to perform duties and responsibilities under the bilateral agreements. This is not to say, however, that you, as superintendent of the North Dakota Highway Patrol, could not assign personnel under your supervision and control to the joint ports of entry to assist in implementation of the bilateral agreements, especially civilian employees of your department. It is my opinion that you would possess authority to make these duty assignments in furtherance of your general responsibility under state law to enforce weight, license, and operation requirements of vehicles which may engage in travel upon the highways of this state. N.D.C.C. § 39-03-09.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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