

OPINION
67-131

March 29, 1967 (OPINION)

Mr. John A. Alphson

State's Attorney

RE: Motor Vehicles - Emergency Vehicles - Use By State's Attorney

Your letter to this office dated March 23, 1967, discusses the duties of your state's attorney's investigator and the fact that there is no authorization for his automobile to be equipped with a siren or flashing red light, and you request our opinion as follows:

Therefore, I would request of you an opinion as to whether the state's attorney or his duly assigned investigator may legally utilize a red flashing rotating beacon on his vehicle and/or a siren as authorized by law."

Flashing lights on automobiles such as the ones used on law enforcement vehicles are prohibited in North Dakota except for those authorized by law. Subsection 2 of section 39-21-26 of the 1965 Supplement to the North Dakota Century Code states as follows:

SPECIAL RESTRICTIONS ON LAMPS. * * *

2. No person shall drive or move any vehicle or equipment upon any highway with any lamp or device thereon displaying a red or green light visible from directly in front of the center thereof. This section shall not apply to any vehicle upon which a red light visible from the front is expressly authorized or required by this chapter.

* * *."

Horns, sirens and other audible warning devices are likewise prohibited except for authorized vehicles. Subsections 2 and 4 of section 39-21-36 of the 1965 Supplement to the North Dakota Century Code provides as follows:

39-21-36. HORNS AND WARNING DEVICES. * * *

2. No vehicle shall be equipped with nor shall any person use upon a vehicle any siren, whistle or bell, except as otherwise permitted in this section.

* * *

4. Any authorized emergency vehicle may be equipped with a siren, whistle or bell, capable of emitting sound audible under normal conditions from a distance of not less than five hundred feet and of a type approved by the registrar, but such siren shall not be used except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the

law, in which said latter events the driver of such vehicle shall sound said siren when reasonably necessary to warn pedestrians and other drivers of the approach thereof."

The definitions for an authorized emergency vehicle are set forth in section 39-01-01 of the North Dakota Century Code and read, in part, as follows:

39-01-01. DEFINITIONS. In this title, unless the context or subject matter otherwise requires:

1. Authorized emergency vehicles:

a. Class A authorized emergency vehicles shall mean:

- (1) Vehicles of a governmental owned fire department;
- (2) Vehicles when operated by or under the control of a police officer having authority to enforce the provisions of this title pertaining to all motor vehicles or by a salaried employee of any municipal police department within the municipality or by any sheriff or deputy sheriff not to include special deputy sheriffs, or by the warden of the state penitentiary and his authorized agents;
- (3) Ambulances;
- (4) Vehicles operated by or under the control of the commissioner, and district deputy commissioner, and district deputy game warden of the North Dakota game and fish department;
- (5) Vehicles owned or leased by the United States Government used for law enforcement purposes;
- (6) Vehicles designated for the use of the adjutant general and assistant adjutant general in cases of emergency;

b. Class B authorized emergency vehicles shall mean wrecker and such other emergency vehicles as are authorized by the local authorities;

c. Class C. vehicles used by civil defense directors while used in the performance of emergency duties;

* * *."

For obvious reasons your investigator's automobile could not be considered a Class A authorized emergency vehicle under subsections a. (1), (3), (4) or (5), or a Class C vehicle. It could not be considered an emergency vehicle under subsection a. (2) because neither the state's attorney nor his investigator is a police officer, a sheriff or a warden, or a deputy thereof.

Therefore, neither the state's attorney nor his duly authorized investigator may legally utilize a red flashing or rotating beacon and/or a siren. The local authorities may authorize that the automobiles driven by the state's attorney and his duly assigned investigator be considered a Class B emergency vehicle and allowed to display a flashing or rotating amber beacon or light. The equipment for and the use of Class B emergency vehicles is governed by section 39-10-03.1 of the North Dakota Century Code and does not permit the use of a red light or a siren.

HELGI JOHANNESON

Attorney General