

**OPINION
64-170**

February 4, 1964 (OPINION)

MOTOR VEHICLES

RE: Registration of Certain Vehicles

This is in response to your request for an official opinion as to whether machines or vehicles with fixed loads, such as diggers, cranes or certain types of excavators, should be required to secure motor vehicle registration. You further state that these machines, as a general rule, are not used on the highways but when they are used it appears that most of them can be operated on the highways at a normal operating speed. We are assuming that the vehicle in question is self-propelled vehicle; that it is capable of moving under its own power from place to place; and that it can be operated on the highways at a relatively high speed. We are further assuming that the vehicle in question is mounted on rubber tires and is used for digging and excavation work.

You further ask whether the payment of a personal property tax would exempt these machines from a motor vehicle registration fee or whether the payment of the registration fee by the owner would exempt these vehicles from being required to pay personal property tax.

Section 39-04-18 of the North Dakota Century code, as is material here, provides as follows:

**MOTOR VEHICLES EXEMPT FROM REGISTRATION FEES - RECIPROCAL USE
OF STATE HIGHWAYS BY FOREIGN LICENSED MOTOR VEHICLES.**

1. Except as provided in this section, every motor vehicle as defined in subsection 2 of section 39-01-01, operated or intended to be operated upon any highway, road, or street in this state shall be registered annually with the motor vehicle registrar. Any vehicle being operated on the highways, roads, or streets of this state shall display such license plates as are furnished by the motor vehicle registrar upon the payment of the fees prescribed in this chapter.* * * *

Subsection 2 of section 39-04-18 of the North Dakota Century Code. (Pocket Supplement), defines and sets forth generally the type of vehicles which may be operated upon the highways without being registered. The definition does not include therein the vehicle in question. Basically, the rule of law is that the exceptions or exemptions to a general provision must be construed strictly. On the basis of such rule, we must limit the exceptions and exemptions to the strict language set forth in the act. The vehicle described in your letter does not come within the exceptions or exemptions. For that matter, we note that section 39-04-18 of the North Dakota Century Code refers to a motor vehicle as defined in subsection 2 of section 39-01-01. This subsection, as amended by Chapter 405 of the

1963 Session Laws, provides as follows:

2. "Bicycle" shall mean every device propelled by human power upon which any person may ride, having two tandem wheels either of which is more than twenty inches in diameter;* * * *."

This obviously appears to be an erroneous reference which can be readily explained. The 1963 Legislature amended section 39-01-01 and assigned different subsections to various definitions. The definition for a motor vehicle is found in subsection 32 and corresponds to what was subsection 2 prior to the amendment. The term "motor vehicle" as defined in subsection 32 of section 39-01-01, as amended, provides as follows:

32. "Motor vehicle" shall include every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rail; ."

A highly technical construction of the present existing statutes would bring about an absurd result to the effect that all bicycles must be registered but not motor vehicles. However, the opening sentence in section 39-04-18 states, "* * * *every motor vehicle as defined in subsection 2 of section 39-01-01,* * * *." This obviously means that this section refers to the definition of a motor vehicle and that subsection 2 was merely a means of identifying the section wherein such definition may be found. Being that the Legislature ascribed a different subsection to the definition of a motor vehicle should not defeat the apparent intent of the language found in section 39-04-18.

While there might be some argument that the vehicle in question should not be registered, we are still compelled to take the statutory provisions as they exist. The vehicle in question is a self-propelled vehicle and is capable of being operated upon the highway, and in certain instances is actually operated upon a highway, road or street. It comes within the definition of a motor vehicle. We must therefore necessarily conclude and it is our opinion that such vehicle comes within the statutory provision requiring self-propelled motor vehicles to be registered with the motor vehicle registrar. Any exemption would first require appropriate legislation. It might be that the Legislature might want to to give this matter special consideration.

As to the question whether the payment of a registration fee will exempt the property from personal property taxes, we wish to refer to section 39-04-38 as found in the 1963 Pocket Supplement of the North Dakota Century Code. This section provides as follows:

TAXES OR FEES PROVIDED FOR TO BE IN LIEU OF OTHER STATE OR LOCAL PERSONAL PROPERTY TAXES. The taxes or fees provided for in this chapter shall be in lieu of all other personal property taxes, either state or local, upon such motor vehicles and upon any trailer or semitrailer for which a certificate of title is required to be issued and has been issued pursuant to the provisions of chapter 39-05."

Section 39-04-38, in substance, provides that the payment of registration fees exempts such property from personal property taxes. The reverse apparently is not true. This means that the payment of personal property tax will not exempt such machine from the registration fee or tax. However, where a personal property tax has been paid and subsequent thereto a registration fee or tax is paid, the owner thereof may have the assessment under the personal property statute abated pursuant to the appropriate sections of law.

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