

**OPINION
64-172**

March 4, 1964 (OPINION)

MOTOR VEHICLES

RE: Operator's License - City Ordinance in Conflict

This is in reply to your letter of March 2, 1964, relative to the application of section 39-06-16 of the North Dakota Century Code, as amended, to section 8-0208 of the Grand Forks City Code.

Section 8-0208 of the City Code provides, according to your letter, as follows:

DRIVERS MUST CARRY OPERATOR'S LICENSE. Every operator of a motor vehicle shall at all times carry on his person his operator's license and certificate of registration of said vehicle, as provided by state laws, when he is operating a motor vehicle along the public highways of this city, and they shall be given up by him for examination upon demand by any police officer as authorized by law."

Section 39-06-16 of the North Dakota Century Code, as amended, provides:

LICENSE TO BE CARRIED AND EXHIBITED ON DEMAND. Every licensee shall have his operator's license or permit in his immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of any court, police magistrate, a county justice, a patrolman, peace officer, or a field deputy or inspector of the highway department. However, no person charged with violating this section shall be convicted or assessed any court costs if he produces in court or the office of the arresting officer an operator's license or permit theretofore issued to him and valid at the time of his arrest."

You note in your letter the Grand Forks City Ordinance is more restrictive in that the police magistrate could assess a fine in the event the individual did not have the license on his person, although the state law appears to prohibit prosecution and fines if the person produces the license for the officer or the court at some later date.

You ask our opinion as to the validity of the Grand Forks ordinance in this respect.

Section 40-05-01(8) of the North Dakota Century Code does give municipalities the power to regulate the use of streets, alleys, avenues and crosswalks. However, the state has assumed the power of licensing the operators of motor vehicles and has enacted statutes such as section 39-06-16 in the exercise of that power. It is questionable whether any power to regulate the licensing of motor vehicle operators is given to municipalities under the present North

Dakota laws, since the assumption of these powers by the state might well be considered as exclusive. In any event it would appear the ordinance enacted by a municipality with regard to this matter could not be substantially different than the state law. We would note that section 40-05-01(27) of the North Dakota Century Code grants municipalities the power to license, tax, and regulate draymen, parcel deliverymen, bus drivers, taxi drivers, porters, expressmen, watermen, and others pursuing like occupations, and the operation of taxicabs. No similar authority is granted to municipalities with respect to drivers of ordinary motor vehicles.

It is therefore our opinion that section 39-06-16 of the North Dakota Century Code, as amended, supersedes a municipal ordinance insofar as the matter of motor vehicle operators' licenses are concerned. If the person charged with failure to have in his possession a valid motor vehicle operator's license subsequently produces a license valid at the time he was so charged, we believe the charge must be dismissed regardless of whether such charge is brought under the provisions of section 39-06-16 of the North Dakota Century Code, as amended, or under a municipal ordinance requiring the carrying of the license.

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