

**OPINION
70-231**

April 7, 1970 (OPINION)

Mr. Ralph M. Wood

Colonel, North Dakota Highway Patrol

RE: Motor Vehicles - Operation While Under Influence - Applies Off H

This is in reply to your letter of March 31, 1970, with regard to the application of the provisions of chapter 39-08 of the North Dakota Century Code to off-highway situations pursuant to the provisions of Section 39-10-01 of the 1969 Supplement to the North Dakota Century Code.

The statutes specified in your letter, Sections 39-08-01 and 39-10-01 of the North Dakota Century Code, as amended, provide as follows:

PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR NARCOTIC
DRUGS NOT TO OPERATE VEHICLE - PENALTY.

1. No person shall drive or be in actual physical control of any vehicle upon a highway in this state if:
 - a. He is an habitual user of narcotic drugs or is under the influence of a narcotic drug, or;
 - b. He is under the influence of intoxicating liquor.

* * *, "

We have deleted the penalty provision of this statute insofar as same is not relevant to the question presented.

PROVISIONS OF CHAPTER REFER TO VEHICLES UPON THE HIGHWAYS - EXCEPTIONS. The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

1. Where a different place is specifically referred to in a given section.
2. The provisions of chapter 39-08, relating to reckless driving, driving while intoxicated, aggravated reckless driving, and negligent homicide shall apply upon highways and elsewhere throughout the state."

While other parts of the above-quoted Section 39-08-01 were amended at the 1969 session of the Legislative Assembly, the quoted language of this section has been in existence since 1959. While the phrase "reckless driving while intoxicated" of said Section 39-10-01 was changed to "reckless driving, driving while intoxicated," at the 1961 legislative session, the other language of this section as quoted above has been in existence since 1955.

We have previously expressed the viewpoint that the effect of Section 39-10-01 is to make the provisions of chapter 39-08 applicable to both highways and "elsewhere" throughout the state. We note for example in this regard letters of this office of date 5 December 1962, 23 October 1964, and 26 March 1965, Xerox copies of which are enclosed herewith. Technically, of course, the language of Section 39-08-01 of the 1969 Supplement to the North Dakota Century Code limiting the application of that section to a "vehicle upon a highway" is the latest legislative expression on the subject, and grammatically the provision of subsection 2 of Section 39-10-01 is merely an exception to the general rule expressed therein that:

The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways."

However, looking to the legislative and administrative history of these statutes, it must be our conclusion that the current reenactment of this language of said Section 39-08-01 was not intended to and does not change the previously existent law in this respect. On such basis it is our opinion that all of the provisions of chapter 39-08 relating to reckless driving, driving while intoxicated, aggravated reckless driving, and negligent homicide do apply upon highways and elsewhere throughout the state by reason of said Section 39-10-01 of the 1969 Supplement to the North Dakota Century Code.

We do not feel that the fact that the individual apprehended for the violation was a juvenile would change this result.

HELGI JOHANNESON

Attorney General