

**OPINION
71-171**

June 14, 1971 (OPINION)

Colonel Ralph M. Wood

Superintendent

North Dakota Highway Patrol

RE: Highway Patrol - Jurisdiction - State Parks

This is in reply to your letter of June 4, 1971, relative to the authority of the Highway Patrol. You state the following facts and questions:

"During the course of routine patrol effort, officers from this department frequently are called upon to respond to what appears to be public offenses, both of traffic and criminal nature, on the roads and highways of our state and federal park system. While it has not been a problem to the present, we have the uncomfortable feeling that we may not have the authority to legally respond to these requests for assistance.

"Would you please examine Section 39-03-09 and particularly subsection 12 of this section to determine whether or not officers of this department may legally enforce traffic and/or criminal statutes in, on and around state parks?"

Section 39-03-09(12) of the 1969 Supplement to the North Dakota Century Code provides:

"The superintendent and each member of the highway patrol, shall have the power:

* * *

2. To exercise general police powers over all violations of law committed in their presence upon any highway and within the highway right-of-way or when in pursuit of any actual or suspected law violator."

The above-quoted provision gives the Highway Patrol the authority over all crimes committed in their presence upon any highway and within the highway right-of-way, in addition to such authority over violations occurring when the Patrol is in pursuit of any actual or suspected law violator. We note the other provisions of section 39-03-09 also refer to the term "highway."

The question thus appears to be whether the roads and highways of the state park system are "highways" within the meaning of section 39-03-09.

The term "highway" is defined by subsection 21 of section 39-01-01 of the 1969 Supplement to the North Dakota Century Code as follows:

"In this title, unless the context or subject matter otherwise requires:

"* * *

1. 'Highway' shall mean the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel;

* * *,."

It would appear that the roads and highways of the state park system are ways "publicly maintained" even though such maintenance may be supplied by the park department rather than by the highway department. We also recognize that the roads and highways in the state park system are not open to the public at all times. Nevertheless they are open to the public under certain conditions and we believe they constitute "highways" within the definition established in Title 39 of the Code. It is therefore our opinion the officers of the Highway Patrol do have authority to enforce traffic and criminal statutes, as the case may be, on highways within State Parks. However, this conclusion applies only to highways within the State Parks and we do not believe the above-quoted statute grants authority to enforce any and all statutes in State Parks. The authority would be limited to that prescribed by section 39-03-09, particularly subsection 12 thereof.

HELGI JOHANNESON

Attorney General