

N.D.A.G. Letter to Eiken (March 30, 1992)

March 30, 1992

Mr. Doug Eiken
Director
North Dakota Parks and
Tourism Department
State Capitol Building
604 E. Boulevard Ave.
Bismarck, ND 58505

Dear Director Eiken:

Thank you for your February 10, 1992, letter requesting clarification of N.D.C.C. § 55-08-06 with regard to permits for motor vehicles. You asked that I address the following questions:

1. Whether N.D.C.C. § 55-08-06 allows the director to issue state park permits which are "movable."
2. Whether N.D.C.C. § 55-08-06 prohibits state park permits from being used by someone other than the purchaser.
3. Whether peace officers can issue citations to either the purchaser or the user, or both, when park permits are used by someone other than the purchaser.

N.D.C.C. § 55-08-06 has been amended on numerous occasions since its enactment, and presently reads as follows:

Unless authorized by the director, no motor vehicle may enter or be permitted to enter any state park, state recreational area, or reserve unless the operator of such motor vehicle shall display upon request a permit issued as provided in this chapter. Permits must be of a size, form, and character as the director shall prescribe, and the director shall procure permits for each calendar year which by appropriate language must grant permission to use any state park, state recreational area, or reserve. Permits for each calendar year must be provided and placed on sale on or before November first next preceding, and used on or at any time after that date until May first of the year following the calendar year for which issued. Such permits in each category must be numbered consecutively for each year of issue. A maximum fee of fifteen dollars may be charged for each permit issued, except that permits of appropriate special design may be sold individually at a maximum of three dollars per permit covering the use of state parks, state recreational areas, or reserves under such conditions as the director may prescribe for a designated period of not

more than three days. The fees collected must be deposited in the state park operating fund in the state treasury, unless authorized by the director as follows:

1. The director may allow other agencies or organizations that have leased state parks, state recreation areas, reserves, or facilities to retain entrance and special permit fees collected by the lessee.
2. The director may exempt all or any part of any state park, state recreational area, or reserve from the requirement of the motor vehicle permit and fee, for any activity or period, when in the director's judgment it is desirable to do so; provided, however, that no further exceptions can be made after state park revenue bonds are issued and while such bonds are outstanding.

There is no case law or previous attorney general's opinion interpreting this statute. I will address your questions in the order that you asked them.

It is my opinion that N.D.C.C. § 55-08-06 allows the director to issue permits that are movable. When first enacted, N.D.C.C. § 55-08-06 required that vehicle permits be "affixed to its (the vehicle's) windshield in the lower right corner thereof." 1965 N.D. Sess. Laws ch. 379. However, in 1975, N.D.C.C. § 55-08-06 was amended to remove the above language and substitute the current "shall display upon request" language. 1975 N.D. Sess. Laws ch. 497. In the hearing before the Senate Committee reviewing this amendment in 1975, the Director of Parks, Einar Johnson, testified that the reason for this particular amendment to the language of N.D.C.C. § 55-08-06 was to allow a park visitor to show the park permit "upon request rather than have to affix it to the car window." Hearing on S. 2105 Before the House Comm. on State and Federal Government, 44th Leg. (January 29, 1975). The legislative intent behind the 1975 amendment to N.D.C.C. § 55-08-06 was to allow the director to issue movable permits.

With regard to your second question, the language of N.D.C.C. § 55-08-06 does not address the issue of who may use park permits after they are purchased. No other provision of the North Dakota Century Code answers this question. When first enacted, N.D.C.C. § 55-08-06 required permits to be "affixed" to the vehicle's windshield, but, as noted above, because of amendments that requirement no longer applies. N.D.C.C. § 55-08-06 gives the director authority to "prescribe" the "size, form, and character" of the permits, but that language deals with the permit's design rather than use. However, N.D.C.C. § 55-08-01.3 provides in relevant part as follows:

The director of the parks and outdoor recreation sites division shall:

...

7. Adopt rules relating to the protection, care, and use of state parks, state campgrounds, state recreational areas, or

reserves, and any other real or personal property administered by the director.

The above provision requires the director to adopt rules relating to use of state parks. Who has access to state parks by means of park permits relates to use. It is my opinion, therefore, that the statute neither authorizes nor prohibits anyone other than the purchaser from using the permit. Instead, the legislature has left it up to the director to adopt rules relating to who may use park permits. If you do not adopt a rule governing use of park permits, your other option is to seek an amendment to N.D.C.C. § 55-08-06 at the next legislative session.

With regard to your third question, it is my further opinion that whether peace officers can issue citations in accordance with N.D.C.C. § 55-08-16 for unauthorized use of park permits depends (1) upon the rules adopted by you as the director and (2) whether those rules are properly promulgated to the public.

Violations of N.D.C.C. ch. 55-08 are infractions. N.D.C.C. § 55-08-17. Infractions are criminal offenses and are thus subject to the constitutional safeguards and strict rules of construction that apply to penal statutes. N.D.C.C. § 12.1-32-07(7); State v. Drader, 432 N.W.2d 553, 554 (N.D. 1988). Therefore, any rules you adopt as director should be carefully drafted to avoid vagueness and ambiguity and should be promulgated in such a way as to give proper notice to the public.

I trust this answers your question.

Sincerely,

Nicholas J. Spaeth

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