

**OPINION
79-37**

March 8, 1979 (OPINION)

Mr. Randy A. Deede
Nelson County State's Attorney
P. O. Box 527
Lakota, North Dakota 58344

Dear Mr. Deede:

This is in response to your letter of February 2, 1979, wherein you request our opinion relative to the sentencing by a county justice of a criminal misdemeanor defendant to serve a term in the State Farm. In your letter you set forth the following facts and questions:

I am the State's Attorney for Nelson County, North Dakota. A defendant has plead guilty to the offense of Unauthorized Use of a Vehicle in violation of section 12.1-23-06 of the North Dakota Century Code, a Class A misdemeanor, in Nelson County Justice Court.

The following question has been raised: Can a Judge of Justice Court commit a prisoner to the North Dakota State Farm who otherwise would be committed to the county jail?

Section 27-18-04 of the North Dakota Century Code states that a County Justice shall have the jurisdiction to hear and determine all cases involving misdemeanors or infractions committed in the county for which he is elected or appointed. (Emphasis added). Further, section 12.1-01-04(5) defines "Court" to include a County Justice.

North Dakota Century Code 12.1-32-02 states:

"Every person convicted of an offense who is sentenced by the Court shall be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense: (c) A term of imprisonment, including intermittent imprisonment: (2) In a county jail, in the state farm, or in a regional detention facility approved by the director of institutions, if convicted of a misdemeanor."

It would appear that the sections of the North Dakota Criminal Code cited above were intended to allow a County Justice to commit prisoners to the North Dakota State Farm even though Judges of the Justice Courts are omitted from North Dakota Century Code section 12-51-07 which specifically permits Judges of the District Courts and of the County Courts with increased jurisdiction to commit certain prisoners to the State Farm.

We have on several prior occasions been asked to render our opinion on questions substantially similar to the one you have raised. Enclosed for your information is a letter addressed from this office

to Mr. Donavin L. Grenz, Emmons County State's Attorney, dated April 20, 1977. In that letter we declined to issue an opinion upon a similar question as the county justice had already sentenced the defendant in that case to the State Farm and the time for appeal had apparently not yet expired. The basis for our declining to rule was that we believed under those circumstances that to render an opinion would be to interfere with the due process rights of the defendant.

In discussing your inquiry with you over the telephone, you have informed us that the original judgment of conviction and sentence in the case you refer to was handed down several months ago, that no appeal has been taken therefrom and that you believe the time for any such appeal has expired. In light of these facts, and because the question you have asked has been raised on previous occasions, it is considered to be appropriate for this office to now respond substantively to this issue.

Because you say that the defendant in the case you present pleaded guilty to a charge of violating North Dakota Century Code 12.1-23-06 which you describe as a class A misdemeanor, we assume that the cost of retrieval and restoration of the vehicle did not exceed \$500.00, as it is only in such instances that a violation of section 12.1-23-06 constitutes a misdemeanor and not a class C felony. Assuming this was the case, there is no doubt that the jurisdiction to determine the charge rested in the county justice court under the provisions of North Dakota Century Code 27-18-04 and 33-01-08, which provide:

27-18-04. JURISDICTION OF COUNTY JUSTICE. - In addition to the jurisdiction and powers formerly vested in the justices of the peace and conferred upon the county justice, the county justice shall have jurisdiction to hear and determine all cases involving misdemeanors or infractions committed in the county for which he is elected or appointed. The territorial jurisdiction of the county justice shall be coextensive with the county or counties for which he is elected or appointed.

33-01-08. CRIMINAL JURISDICTION OF COUNTY JUSTICE. - The jurisdiction and authority of county justices to prevent the commission of public offenses, to institute searches and seizures, to require the arrest and detention of persons charged with crime, to require and accept bail, and otherwise to act as magistrates in matters of crime, is prescribed by title 29. Each county justice has jurisdiction and authority coextensive with his county to hear, try, and determine all cases of class A misdemeanor, class B misdemeanor, and infraction arising from crimes committed in the county for which he is elected or appointed and every other criminal action in which jurisdiction is conferred specially by law.

The sentencing alternatives included in Section 12.1-32-02 to which you refer were enacted as part of a general revision of the state Criminal Code and sentencing laws, approved during the 1973 and 1975 legislative sessions, the original language of Section 12.1-32-02 having been enacted in 1973 without the language of subdivision c. S.L. 1973, Ch. 116, <31. In 1975 the Legislative Assembly approved Senate Bill 2040 based upon a two-year study by the Legislative

Council, which bill was a second general revision to the state's criminal laws and included an amendment to the previously enacted Section 12.1-32-02. S.L. 1975, Ch. 116, <25. As amended in 1975, this section now reads in pertinent part as follows:

12.1-32-02. SENTENCING ALTERNATIVES - CREDIT FOR TIME IN CUSTODY - DIAGNOSTIC TESTING. - 1. Every person convicted of an offense who is sentenced by the court shall be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense:

. . . .

c. A term of imprisonment, including intermittent imprisonment:

- (1) In the penitentiary or a regional detention facility approved by the director of institutions, or in the state farm in accordance with section 12-51-07, if convicted of a felony.
- (2) In a county jail, in the state farm, or in a regional detention facility approved by the director of institutions, if convicted of a misdemeanor.

. . . .

In your letter you appear to base your conclusion that the sentencing alternatives set forth in Section 12.1-32-02 are available to a county justice court because of the definition of the word "court" contained in Section 12.1-01-04(5). We believe that an even more compelling reason exists by which the sentencing alternatives in Section 12.1-32-02 and, in fact, all of Chapter 12.1-32 regarding sentencing and penalties, is applicable to judgments of a county justice court. Section 33-12-28 provides:

33-12-28. CONVICTION OF DEFENDANT - JUDGMENT. When the defendant in a criminal action in a county justice court is convicted by the court or by a jury, the court shall render judgment in accordance with chapter 12.1-32.

We see from a review of the legislative history of this section that the language of this section referring to Chapter 12.1-32 was added in 1975 (S.L. 1975, Ch. 106 <353) in the same legislative session in which Section 12.1-32-02 was amended to allow for the sentencing by a "court" to the State Farm for conviction of a misdemeanor. The legislative intention would therefore appear to have been to allow county justice courts to make use of the sentencing provisions of Section 12.1-32-02 as it applies to the misdemeanor jurisdiction of county justice courts.

We find nothing in Section 12-51-07 which conflicts with the above interpretation. Section 12-51-07 provides as follows:

12-51-07. PRISONERS ELIGIBLE FOR COMMITMENT TO STATE FARM -

COMMITMENT THERETO DEEMED A CONVICTION OF MISDEMEANOR. - The judges of the district courts, and of the county courts with increased jurisdiction, may commit to the state farm, so far as the capacity of the farm shall permit, all male persons who otherwise would be committed to the county jail or to the penitentiary for violation of any criminal law of this state, where the sentence is not less than thirty days nor more than one year provided that no person shall be committed to the state farm who:

1. Has at any time been convicted of a sexual offense;
2. Has served a sentence or portion thereof in a penitentiary upon conviction of a felony; or
3. Has a history of moral or sexual degeneration.

A person committed to the state farm shall not be deemed to have been convicted of a felony, but shall be deemed to have been convicted of a misdemeanor.

We do not understand there to be any conflict, much less an irreconcilable one, between this section and Section 12.1-32-02. While it is true that Section 12-51-07 only refers to the authority of district courts and county courts with increased jurisdiction, there is no language stating that a county justice court may not sentence those convicted of misdemeanors to the State Farm. In light of the provisions of Sections 12.1-32-02 and 33-12-28, we do not construe the silence of Section 12-51-07 on this subject to mean that justice courts may not sentence violators of criminal misdemeanor laws to the State Farm. As far as is possible, statutes relating to the same subject matter should be construed to give effect to both if such can be done without doing violence to either statute. *City of Fargo, Cass County v. State*, 260 N.W.2d. 333, 338 (N.D. 1977); *In re Weissner Finance Company*, 169 N.W.2d. 420 (N.D. 1969). No violence is done to either Section 12-51-07 or 12.1-32-02 by the above interpretation; each statute retains its full force and effect. Were an irreconcilable conflict shown to exist, it is doubtful that our opinion would be any different, as Section 33-12-28 and the critical amendment to Section 12.1-32-02 were enacted substantially later than Section 12-51-07 and therefore must be considered to be the controlling expression of legislative intent on this subject. *City of Fargo, Cass County v. State*, supra, at 338.

Finally, we note that in previous correspondence we have on several occasions indicated an opposite conclusion to that which we have reached above, and concluded that a county justice court may not sentence a misdemeanor violator to the State Farm. These conclusions, however, were drawn solely on the basis of the language of Section 12-51-07, many years prior to the enactment of the current language in Sections 12.1-01-04(5), 12.1-32-02, and 33-12-28. We do not therefore consider them controlling under current law.

In direct response to your question, we believe that a county court is empowered to sentence violators of criminal misdemeanor statutes, over which the court otherwise properly exercises jurisdiction, to serve a term of imprisonment in the State Farm pursuant to Sections

33-01-08 and 12.1-32-02.

It is hoped that the foregoing will be of assistance.

Sincerely,

ALLEN I. OLSON

Attorney General