

LETTER OPINION
93-L-21

January 28, 1993

Mr. F.C. Rohrich
Emmons County State's Attorney
PO Box 657
Linton, ND 58552

RE: N.D.C.C. ? 39-08-03.1

Dear Mr. Rohrich:

Thank you for your January 12, 1993, letter in which you raised questions concerning the scope of N.D.C.C. ? 39-08-03.1, specifically as it relates to exhibition driving.

Subsection 1 of N.D.C.C. ? 39-08-03.1 provides:

No person may engage in exhibition driving of any vehicle on a highway, street, alley, sidewalk, or any public or private parking lot or area, nor may any person engage in a race, a speed competition, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration. Any person who violates this section by engaging in an act defined by subdivision b of subsection 2 must be assessed a fee of fifty dollars. Any person who violates this section by engaging in an act defined by subdivision a or c of subsection 2 must be assessed a fee of one hundred dollars.

N.D.C.C. ? 39-08-03.1(2)(b) defines "exhibition driving" as "driving a vehicle in a manner which disturbs the peace by creating or causing unnecessary engine noise, tire squeal, skid, or slide upon acceleration or braking; or driving and executing or attempting one or a series of unnecessarily abrupt turns."

The definition has two parts. The first part requires

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January 28, 1993

that the manner of driving disturb the peace. There is no such requirement in the second part of the definition. Therefore, it is necessary to establish by a preponderance of the evidence that the driver disturbed the peace by the manner of the driver's operation of the vehicle only if the first part of the definition of exhibition driving is being used.

It should be noted, however, that a violation of N.D.C.C. ? 39-08-03.1 does not necessarily involve "exhibition driving." A person may be found to have committed a violation of N.D.C.C. ? 39-08-03.1 if that person either engages "in exhibition driving of any vehicle on a highway, street, alley, sidewalk or any public or private parking lot or area" or engages "in a race, a speed competition, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration."

The definition of "exhibition driving" as set forth in N.D.C.C. ? 39-08-03.1(2)(b) therefore has application only to the first ground for the driver to be in violation of N.D.C.C. ? 39-08-03.1. Consequently, there would be no requirement to establish that a motor vehicle operator disturbed the peace if the violation is based upon the second series of grounds set forth above. In other words, there is no requirement that an operator be shown to have disturbed the peace if that operator was engaged in a race, a speed competition, a drag race or acceleration contest, a test of physical endurance, or an exhibition of speed or acceleration. If these facts are present, they would be sufficient, absent a disturbing of the peace, to support a finding that a driver violated N.D.C.C. ? 39-08-03.1.

I hope that this information is helpful to you.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

rpb/vkk