

LETTER OPINION
2000-L-21

February 22, 2000

The Honorable Carolyn Nelson
State Senator - District 21
1125 College St
Fargo, ND 58102-3433

Dear Senator Nelson:

Thank you for your letter asking me to revisit the question set forth in North Dakota Attorney General's Opinion 82-1 issued by Attorney General Robert Wefald to K. M. Knutson. In that opinion, Attorney General Wefald concluded that a law enforcement officer may issue a uniform traffic complaint and summons pursuant to N.D.C.C. § 29-05-31 in any case involving violations of noncriminal state traffic statutes or city traffic ordinances even though the violation did not occur in the presence of the officer. I am enclosing a copy of North Dakota Attorney General's Opinion 82-1 for your information.

A review of the relevant statutory and case law since the issuance of the 1982 opinion fails to disclose any basis to change the conclusions reached in that opinion regarding violations which do not occur in an officer's presence. Legislation since issuance of the opinion, in fact, encourages the speedy disposition of noncriminal traffic offenses with minimal court involvement. Senate Bill No. 2116, as adopted by the 1995 Legislative Assembly, established a more detailed procedure in N.D.C.C. § 39-06.1-02 for the payment and disposition of a noncriminal traffic bond without a court appearance by the offender. If the person cited for the noncriminal traffic offense requests a hearing within the time required by law, the court for the county in which the citation was issued will issue a summons to the person requesting the hearing notifying that person of the hearing date. N.D.C.C. § 39-06.1-02 also makes specific reference to a "citation", rather than a "complaint", being issued to a person "cited" for a noncriminal traffic offense.

Whether a person has committed an offense in the presence of an officer has importance when applying the laws of arrest. Except in the case of the specific statutory exceptions, N.D.C.C. § 29-06-15(1) requires that an arrest may be made without the issuance of a warrant for a misdemeanor offense only if the offense has been committed in the arresting officer's presence. However, these laws of arrest are not applicable to a noncriminal traffic offense. The United States Supreme Court has recognized that a routine traffic stop is not viewed in the same

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constitutional sense as an arrest. Knowles v. Iowa, 525 U.S. 113 (1998); Berkemer v. McCarty, 468 U.S. 420 (1984).

Except for specific statutory provisions such as N.D.C.C. § 29-06-15.1, which permits the arrest of a non-resident traffic violator involved in a traffic accident should the officer have reasonable and probable grounds to believe the person will disregard a written promise to appear in court, the general statutory rule is that an offender who commits a noncriminal traffic offense will not be taken into custody or arrested. N.D.C.C. § 39-07-07 states, in part:

A halting officer employed by any political subdivision of the state may not take a person into custody or require that person to proceed with the officer to any other location for the purpose of posting bond, where the traffic violation was a noncriminal offense under section 39-06.1-02. The officer shall provide the person with an envelope for use in mailing the bond.

This review of applicable North Dakota law discloses that use of the uniform traffic complaint and summons, as authorized by N.D.C.C. § 29-05-31, for noncriminal traffic offenses is not only encouraged but, also, expected. Although the uniform traffic complaint and summons may be used only in cases involving violations of statutes or ordinances relating to the operation or use of motor vehicles, there is no requirement that the noncriminal traffic offense occur in the presence of the officer before issuance of the uniform traffic complaint and summons. This complaint and summons by the specific language of N.D.C.C. § 29-05-31 may be used in lieu of any other complaint for the offense charged in the uniform traffic complaint and summons.

In your letter you stated that a court has not been accepting the uniform traffic complaint and summons when issued for offenses not committed in the citing officer's presence. I can neither order nor direct the judiciary to accept the uniform traffic complaint and summons. Although opinions of the Attorney General are entitled to respect and may have an important bearing on the construction and interpretation of a statute, these opinions are not binding upon the courts. Werlinger v. Champion Health Care Corp., 598 N.W.2d 820, 833 (N.D. 1999). Whether the uniform traffic complaint and summons will be accepted by the court may be an issue which will have to be addressed with the judge individually, or with the Supreme Court or its administrator's office.

Sincerely,

Heidi Heitkamp

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Attorney General

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