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DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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NO. STATE OF NEBRASKA
OFFICIAL
JUN 27 1985
DEPT. OF JUSTICE

June 26, 1985

SUBJECT: Operation of Motor Vehicle Subsequent to
Revocation of Operator's License and Privilege.

REQUESTED BY: Kristine R. Cecava
Keith County Attorney

OPINION BY: Robert M. Spire
Attorney General

Jill Gradwohl
Assistant Attorney General

QUESTION: If an individual were to operate a motor vehicle on the following types of property: (1) private property; (2) a highway; or (3) public property other than a public highway; would he or she violate the license suspension provisions contained in Neb.Rev.Stat. §39-669.07 (Reissue 1984) under the following circumstances: (a) the motor vehicle is one for which an operator's license is required and which is subject to registration provisions; (b) the motor vehicle is not subject to registration provisions; or (c) the motor vehicle is one for which an operator's license is not required.

CONCLUSION: (1) Operation of a motor vehicle on private property under any of the above circumstances does not constitute a violation of the license suspension provision contained in §39-669.07. (2) Operation of a motor vehicle on a highway under the above circumstances constitutes a violation of §39-669.07 unless a vehicle for which an operator's license is not required is operated for purposes other than personal transportation.

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Ms. Kristine R. Cecava
June 26, 1985
Page -2-

(3) Operation of a motor vehicle on public property other than a public highway under the above circumstances constitutes a violation of §39-669.07 where such property is publicly maintained and open to the use of the public for purposes of vehicular travel.

You have requested an opinion with regard to the circumstances under which an individual operating a motor vehicle may be violating the license suspension provisions contained in Neb.Rev.Stat. §39-669.07(1), (2), and (3) (Reissue 1984). Sections 39-669.07(1), (2), and (3) each provides that when an individual is found guilty of driving while intoxicated in violation of such section, "the court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose" for a period of time.

Your inquiries are directed at the operation of motor vehicles on three separate types of property: (1) private property; (2) a highway; and (3) public property other than a public highway. With regard to each of these locations, you have inquired whether an individual will violate the license suspension provisions of §39-669.07 if: (1) he or she operates a motor vehicle for which an operator's license is required and which is subject to registration provisions; (2) he or she operates a motor vehicle which is not subject to registration provisions; or (3) he or she operates a motor vehicle for which an operator's license is not required.

CONCLUSION (1)

First, operation of a motor vehicle on private property under any of the above circumstances does not constitute a violation of the license suspension provisions of §39-669.07. Neb.Rev.Stat. §39-603 (Reissue 1984) provides that "[t]he provisions of sections 39-601 to 39-6,122 relating to operation of vehicles refer exclusively to operation of vehicles upon highways except where a different place is specifically referred to in a given section," Neb.Rev.Stat. §39-602 (Reissue 1984) states that "[a]s used in sections 39-601 to 39-6,122 and in Chapter 39, unless the context otherwise requires: . . ."

(32) Highway shall mean the entire width between the boundary limits of any street, road, avenue, boulevard, or way which is publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel; . . .

(53) Motor vehicle shall mean every self-propelled land vehicle, not operated upon rails, except mopeds and self-propelled invalid chairs;

Neb.Rev.Stat. §39-603 makes the provisions of Neb.Rev.Stat. §39-601 to 39-6,122 applicable solely to the operation of vehicles upon the highways of this state. Therefore, one would not violate §39-669.07 if he or she operates a motor vehicle on private property under any of the circumstances which you have presented in your letter.

CONCLUSION (2)

Second, operation of a motor vehicle on the highways of this state constitutes a violation of the license suspension provisions of §39-669.07, except under limited circumstances. Operation of a motor vehicle, for which an operator's license is required by Neb.Rev.Stat. §§60-401 et seq. (Reissue 1984) and which is subject to registration pursuant to Neb.Rev.Stat. §§60-302 et seq. (Reissue 1984), on the public highways of this state constitutes a violation of the license suspension provisions contained in §39-669.07. Such conduct falls within the prohibition contained in §39-669.07 and §§39-603, 39-602(32) and 39-602(53) defining the terms contained therein.

One who operates a motor vehicle, which is not subject to the registration provisions contained in §§60-301 et seq., on the highways of this state will violate the license suspension provisions of §39-669.07. The definition of "motor vehicles" for purposes of registration is set forth in Neb.Rev.Stat. §60-301(1) (Reissue 1984). In examining the question of whether an individual is violating the license suspension provision of §39-669.07, however, the definition of "motor vehicle" provided in §39-602(53) controls. Therefore, if an individual operates a motor vehicle, which is not subject to registration yet falls within the definition of "motor vehicle" contained in §39-602(53), on a highway of this state, he or she will be violating the license suspension provisions of §39-669.07.

Additionally, you have inquired whether an individual would be violating the terms of §39-669.07 if he or she, during the period of the revocation, operates a motor vehicle, for which an operator's license is not required, on a highway of this state. One may operate a motor vehicle, for which an operator's license is not required, on a highway after his or her license has been suspended pursuant to §39-669.07 so long as such motor vehicle is not operated on a highway solely for purposes of personal transportation. Neb.Rev.Stat. §60-430.04 (Reissue 1984) provides as follows:

Ms. Kristine R. Cecava
June 26, 1985
Page -4-

No person whose motor vehicle operator's license has been suspended or revoked as a result of a conviction for operating a motor vehicle while under the influence of intoxicating liquor shall operate, solely for personal transportation, on the streets, road, or highways of this state any motor vehicle driven for which a motor vehicle operator's license is not required.

CONCLUSION (3)

Third, you have inquired whether a person would violate the license revocation provisions of §39-669.07 if he or she, during the period of the revocation, operates a motor vehicle on public property other than a public highway. The provisions of §39-669.07 are limited by §39-603 to conduct occurring upon the highways of this state. By definition, "highway" is limited to property which is publicly maintained and open to the use of the public for purposes of vehicular travel.

If an individual were to operate a motor vehicle on public property which was open to the use of the public for purposes of vehicular travel, he or she would be violating the suspension provisions contained in §39-669.07. Section 39-669.07 would be violated so long as the motor vehicle which was so operated was a motor vehicle as defined by §39-602(53) regardless of whether the motor vehicle was one which is subject to registration. If one operated a motor vehicle for which no operator's license is required on such property, he or she would violate the terms of §39-669.07 if the motor vehicle was operated solely for purposes of personal transportation. However, if the property on which the individual drove was not publicly maintained and open for the use of the public for purposes of vehicular travel, §39-669.07 would not be violated under any of the circumstances which you have presented in your request for an opinion.

Sincerely,

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Attorney General


Jill Gradwohl
Assistant Attorney General

JG:cw

APPROVED:

Attorney General