

VOLUME NO. 43

OPINION NO. 11

HIGHWAYS - Duty to yield right-of-way to police or authorized emergency vehicle;

MOTOR VEHICLES - Duty to yield right-of-way to police or authorized emergency vehicle;

TRAFFIC - Duty to yield right-of-way to police or authorized emergency vehicle;

MONTANA CODE ANNOTATED - Sections 61-8-107, 61-8-346, 61-9-402.

HELD: Upon the immediate approach of an authorized emergency vehicle making use of only visual signals pursuant to section 61-9-402, MCA, other drivers must yield the right-of-way and/or stop. They may then proceed past such signal with caution and at a speed no greater than is reasonable and proper under the existing conditions.

May 3, 1989

Keith D. Haker
Custer County Attorney
Custer County Courthouse
Miles City MT 59301

Dear Mr. Haker:

You have requested my opinion on the following question:

Upon the immediate approach of an authorized emergency vehicle making use of only visual signals pursuant to section 61-9-402, MCA, must other drivers yield the right-of-way, drive their vehicles to the right-hand edge of the roadway, and stop?

You have informed me that there is confusion concerning whether the use of visual signals (lights) alone by police vehicles and authorized emergency vehicles mandates that other drivers yield the right-of-way and stop, or whether use of both audible and visual signals (or a police vehicle using an audible signal only) are required before other drivers must yield the right-of-way and stop.

Three sections of Montana law, §§ 61-8-107, 61-8-346, and 61-9-402, MCA, are relevant. These statutes were all enacted in 1955 as part of a lengthy act regulating traffic and operation of vehicles. 1955 Mont. Laws, ch. 263.

Section 61-8-346, MCA, provides:

Operation of vehicles on approach of police vehicles or authorized emergency vehicles. (1) Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of 61-9-402 or of a police vehicle properly and lawfully making use of an audible signal only, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the police vehicle or authorized emergency vehicle has passed, except when otherwise directed by a police officer or highway patrolman.

(2) This section shall not operate to relieve the driver of a police vehicle or authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

This section expressly requires use of audible and visual signals by authorized emergency vehicles, or proper use of audible signals only by a police vehicle, before the drivers of other vehicles must comply with the mandates of the statute.

Sections 61-8-107 and 61-9-402, MCA, were originally consistent with the stopping requirements of section 61-8-346, MCA. However, in 1975, section 61-9-402, MCA, was amended creating an apparent inconsistency in the statutes. See Senate Highways and Transportation Committee Meeting Minutes on House Bill 508, March 11, 1975. Section 61-9-402, MCA, now provides, in part:

Audible and visual signals on police and emergency vehicles and on-scene command vehicles. (1) A police vehicle shall be equipped with a siren capable of giving an audible signal and may, but need not, be equipped with alternately flashing or rotating red or blue lights as specified herein. The use of signal equipment described herein shall impose upon the drivers of other vehicles the obligation to yield right-of-way and/or to stop and to proceed past such signal or light only with caution and at a speed which is no greater than is reasonable and proper under the conditions existing at the point of operation.

(2) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped with a siren and an alternately flashing or rotating red light as specified herein.

(3) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level, and these lights shall have sufficient intensity to be visible at 500 feet in normal sunlight.

....

(5) Police vehicles and authorized emergency vehicles may, and emergency service vehicles shall, in addition to any other equipment and distinctive markings required by this chapter be equipped with alternately flashing or rotating amber lights as specified herein. The use of signal equipment described herein

shall impose upon the drivers of other vehicles the obligation to yield right-of-way and/or to stop and to proceed past such signal or light only with caution and at a speed which is no greater than is reasonable and proper under the conditions existing at the point of operation.

Thus, section 61-8-346, MCA, requires other drivers to yield the right-of-way, pull to the side of the roadway and stop when a police or authorized emergency vehicle is making use of audible and visual signals or when a police vehicle is properly making use of only an audible signal. Section 61-9-402, MCA, requires other drivers to yield the right-of-way and/or stop when a police or authorized emergency vehicle is making use of visual or audible signals, or both.

Finally, section 61-8-107, MCA, which authorizes the driver of a police or authorized emergency vehicle to disregard many traffic signals and regulations under certain conditions, was amended in 1981 to specifically allow the exemptions of the section to apply when a police or authorized emergency vehicle is making use of an audible or visual signal, or both, meeting the requirements of section 61-9-402, MCA. This statute is relevant because, logically, drivers of emergency vehicles may ignore traffic signals and regulations only if other drivers are required to yield the right-of-way to them.

In construing legislation, an attempt is made to harmonize related statutes, giving effect to all. Matter of W.J.H., 44 St. Rptr. 817, 821, 736 P.2d 484, 486-87 (1987). In my opinion the statutes at issue may be harmoniously interpreted to reach the following conclusions: Upon immediately approaching a police vehicle or an authorized emergency vehicle making use of audible and visual signals or of a police vehicle lawfully and properly using only an audible signal, a driver must yield the right-of-way and immediately drive to a position parallel to, and as close as possible to, the right-hand edge of the roadway clear of any intersection and must stop and remain in such position until the emergency vehicle has passed. § 61-8-346, MCA. If a police or authorized emergency vehicle is using only its lights, as allowed in section 61-9-402, MCA, a driver has more discretion as to whether to pull over to the curb and stop or to yield the right-of-way and/or stop and proceed past such signal or light with caution and only at an appropriate speed. § 61-9-402, MCA.

THEREFORE, IT IS MY OPINION:

Upon the immediate approach of an authorized emergency vehicle making use of only visual signals pursuant to section 61-9-402, MCA, other drivers must yield the right-of-way and/or stop. They may then proceed past such signal with caution and at a speed no greater than is reasonable and proper under the existing conditions.

Sincerely,

MARC RACICOT
Attorney General