

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2392

2007 SENATE POLITICAL SUBDIVISIONS

SB 2392

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2392

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: February 2, 2007

Recorder Job Number: 2709

Committee Clerk Signature

*Shirley Borg*

Minutes:

**Chairman Cook** called the committee to order. All members (5) present.

**Chairman Cook** opened the hearing on SB 2392 relating to the imposition of fees by home rule cities for certain vehicle and traffic violations.

**Senator Fiebiger**, District 45, introduced SB 2392. He was asked to bring this bill to you by the City of Fargo.

**Keith Ternes**, Police Chief for City of Fargo, ND testified in support of SB 2392. Early last year the City of Fargo considered and then did eventually raise the traffic fines for traffic violations within the city. We did so for a number of reasons. First, traffic violations in Fargo are a primary complaint that we get from the residence with in the city. In order to address and try to mitigate some of those traffic concerns, we analyzed whether it was necessary for us to raise our traffic fines. The first thing we did was look at other communities similar in size to see what their traffic fines were. Even the city of Grand Forks had traffic fines for some traffic violations that were higher than Fargo's. Fargo's were significantly lower. We wanted our fines comparable to other cities our size. The other reason why we considered raising our fines was because we also recognize that traffic problems in the City of Fargo are certainly going to be different than they may be in Casselton, ND. Just the sheer volume of traffic in

the city of Fargo and the number of traffic violations that are occurring along with the number of traffic crashes that occur in the City of Fargo, clearly demonstrate that the traffic issues and traffic problems are different in Fargo than in some of the smaller communities. Just to give you an example in the city of Fargo we average about four thousand traffic crashes every year. There is a real cost associated with the city having to spend resources and having police officers, fire fighters, street department personnel and whatever it takes to respond to these traffic crashes. Fargo is not the only city in the state who has traffic fines that are higher than those imposed by the state statute. I feel as a police chief that it is certainly important to do two things, try and mitigate some of the traffic violations that occur within the city. One is to establish a sense for drivers that if you do commit a traffic violation the chances of you getting a traffic citation are very good. There has to be that component. The other thing that has to be associated with that, is that when you do receive a traffic citation you have to be somewhat deterred by the fine associated with that. This bill clarifies some language that will allow home rule cities to impose the traffic fines or fees for any things that they felt that were appropriate.

**Erik Johnson**, City Attorney, Fargo, ND testified in support of SB 2392. The proposed bill is intended to clarify what the attorney general back in 1982 thought was the law and what municipal judges and district court judges have interpreted as the law across the state. There is a provision in the municipal code, 40-05 that deals with the powers of cities. 40-05.1 is the chapter that gives home rule cities some additional powers. In 1969 the legislature created the authority for cities to have home rule powers and many cities such as Fargo have adopted those home rule powers. There is an exception in the chapter dealing with cities in terms of their traffic fines that says that cities can pass ordinances that create violations for traffic and can set the fines for those traffic violations but they can not exceed the state limits. Home rule

cities are not governed by that limitation of the state cap but the proposed bill would clarify that fact. He passed out some proposed amendments (See attachment #1)

**Bill Wocken**, City Administrator for City of Bismarck, testified in favor of SB 2392. The bill seeks to codify an attorney general's opinion to allow cities to utilize home rule authority to customize traffic fines. We believe that in Bismarck it is necessary to adjust some of the fines set by state law to take care of some of the local traffic concerns. We have used the authority that we believed we already had successfully. The effect of SB 2392 is to go back and say yes that is what the authority of cities is and we have utilized that successfully.

**Chairman Cook** asked Keith Magnuson to answer a question. Where do speeding violations, stop sign violations and fines imposed by the state go?

**Keith Magnuson**, Deputy Director for Driver Vehicle Services, Department of Transportation, answer that they really are not fines. They are non criminal traffic violation fees and they go to the common schools trust fund. The ones that municipalities levy stay with the cities.

**Connie Sprynczynatyk**, North Dakota League of Cities, feels that this is one issue that the community needs to take hold of.

No further testimony in favor, opposed or neutral.

**Chairman Cook** closed the hearing on SB 2392.

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2392**


Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: **February 8, 2007** (Committee work)

Recorder Job Number: **3204**

Committee Clerk Signature



Minutes:

**Chairman Cook** called the committee to order. All members (5) present.

**Chairman Cook** reviewed SB 2392 giving Home Rule Cities the ability to charge traffic fines greater than the state statute.

**Senator Anderson** moved Do Pass.

**Senator Warner** seconded the motion.

Discussion:

**Senator Anderson:** I liked the testimony on that there are different situations in different cities. Most of the testimony we received was from our largest city. I agree there are situations there where additional fines are necessary.

**Senator Hacker:** There was an amendment that was proposed. I don't think this would change the bill for him. I have heard that there are those that believe that fines would detract people from breaking the law and many believe that those that are going to break the law are going to break the law and that imposing different amounts of money doesn't mean it will lower the amount of traffic violations.

**Chairman Cook** asked how high these cities would levy their fines if they did not get to keep the money.

**Senator Olafson:** Apparently they get to keep the money.

**Senator Warner:** Could you outline at the state level, if they keep any of the fines.

**Chairman Cook :** I believe that any of the dollars from fines go to the school land and trust fund.

**Chairman Cook:** I think we need to know the answer to that. I think we have to pass this bill considering the situation in Fargo and the confusion that has shown up and if we can help them with their potential law suit. I think the argument would be a lot sounder if some of the money had to go to the school land trust fund.

**Senator Hacker:** I would vote for an amendment that would state that cities may not access a larger fine then 150% of the state fine amount. I would be comfortable with the bill at that time.

**Senator Olafson:** I would support some type of amendments as Senator Hacker is proposing.

**Senator Anderson:** I with draw my motion.

**Senator Warner:** I think we create a moral hazard with the cities if we allow them to become a profit center. Law enforcement should never become a profit center.

**Chairman Cook:** I will work at getting some amendments drafted so we know where all the fines go in cities and states. How high should a city be able to go over that and what percent of that should go to the school land trust funds?

**Senator Hacker:** I need an absolute cap.

**Chairman Cook:** Maybe about twice the state. We will work on the amendments.

**Chairman Cook** adjourned the committee.

# 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2392**

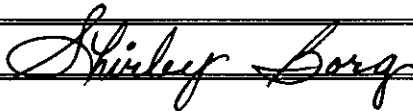
Senate Political Subdivisions Committee

Check here for Conference **Committee**

Hearing Date: **February 9, 2007**

Recorder Job Number: **3262**

Committee Clerk Signature



Minutes:

**Chairman Cook** called Senate Political Subdivisions committee to order.

**Chairman Cook:** Amendments are handed out that say when a Home Rule City imposes a fine that exceeds two hundred per cent of the limits. The amount that exceeds two hundred per cent must be paid into the treasury of the proper county to be added to the state school fund.

**Senator Warner** moved to adopt the amendments to SB 2392.

**Senator Hacker** seconded the motion.

Discussion:

Voice Vote: All members in favor. Amendments adopted.

**Senator Anderson** moved a Do Pass as Amended

**Senator Warner** seconded the motion.

Roll call vote: Yes 5 No 0 Absent 0

Carrier: **Senator Hacker**



Sixtieth  
Legislative Assembly  
State of North Dakota

PROPOSED AMENDMENTS TO SENATE BILL 2392

Page 1, add a preamble to read as follows:

WHEREAS, there has been a certain amount of confusion or differing opinion as to whether home rule cities have the authority to enact an ordinance imposing fees for traffic violations that exceed the fees as set by the state in section 39-06.1-06;

Page 1, after line 17, insert:

c. Ordinances of a home rule city that established fees in excess of those set forth in section 39-06.1-06 and that were enacted prior to the enactment of subsection b, above, shall be considered valid and enforceable as a lawful exercise of home rule authority.

Page 1, after line 18, insert:

**Section 4. RETROACTIVE APPLICATION OF ACT.** This Act is retroactive in application.

PROPOSED AMENDMENTS TO SENATE BILL 2392

Page 1, line 17, after the period insert "When a home rule city imposes a fine that exceeds two hundred percent of the limits set forth in section 39-06.1-06, the amount that exceeds two hundred percent of that limit must be paid into the treasury of the proper county to be added to the state school fund."

70843.0101  
Title.0200

Adopted by the Political Subdivisions  
Committee

February 9, 2007

*JB*  
*2-9-7*

PROPOSED AMENDMENTS TO SENATE BILL NO. 2392

Page 1, line 17, after the underscored period insert "If a home rule city imposes a fee that exceeds two hundred percent of the limits in section 39-06.1-06, the amount that exceeds two hundred percent of that limit must be paid into the treasury of the proper county to be added to the state school fund."

Renumber accordingly

Date: 2-9-07  
Roll Call Vote #: 1

**2007 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
BILL/RESOLUTION NO. SB 2392

Senate Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Moved to Adopt Amendments

Motion Made By Senator Warner Seconded By Senator Hacker

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman			Senator Arden C. Anderson		
Senator Curtis Olafson, ViceChair			Senator John M. Warner		
Senator Nicholas P. Hacker					

Total Yes 5 No -

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 2-9-07  
Roll Call Vote #: 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2392

Senate Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass as Amended

Motion Made By Senator Anderson Seconded By Senator Warner

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman	X		Senator Arden C. Anderson	X	
Senator Curtis Olafson, ViceChair	X		Senator John M. Warner	X	
Senator Nicholas P. Hacker	X				

Total Yes 5 No 0

Absent 0

Floor Assignment Senator Hacker

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2392: Political Subdivisions Committee (Sen. Cook, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2392 was placed on the Sixth order on the calendar.

Page 1, line 17, after the underscored period insert "If a home rule city imposes a fee that exceeds two hundred percent of the limits in section 39-06.1-06, the amount that exceeds two hundred percent of that limit must be paid into the treasury of the proper county to be added to the state school fund."

Renumber accordingly

2007 HOUSE JUDICIARY

SB 2392

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2392

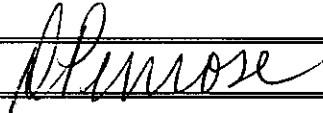
House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/26/07

Recorder Job Number: 3793

Committee Clerk Signature



Minutes:

**Chairman DeKrey:** We will open the hearing on SB 2392.

**Sen. Tom Fiebiger:** Sponsor, introduced the bill. This bill relates to the imposition of fees by home rule cities for certain vehicle and traffic violations. The Fargo City Attorney, Eric Johnson is here today and he will walk you through the bill and its history.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Eric Johnson, Fargo City Attorney:** Earlier this month the city of Fargo was served with a lawsuit that tended to be a Class action lawsuit, relating to the subject matter of this bill. This bill had been introduced prior to that lawsuit, but the class action, if allowed, would expose Fargo and other home rule cities to the same types of claims brought against Fargo. The damages are unknown but cities would probably be exposed to hundreds of thousands of dollars of claim damages. The background to this, is that in 1969, the State Legislature authorized home rule powers for cities and as a result, a number of cities throughout the state enacted home rule powers. Fargo enacted theirs in 1971. The problem is that there is a little incongruity in the statutes between those that provide for traffic fines and the general home rule powers authority by state law. Home rule cities, throughout the state, for many years have imposed traffic fines that exceed the state limits, but the claim in this particular lawsuit says



that because of the incongruity in the law, cities are only authorized to impose traffic fines that are allowed by the state schedule, so that if it is a \$20 fine on the state schedule for a stop sign violation, that's all a city can impose. There had been a 1982 AG's opinion, asking about the authority of home rule cities to impose a fine that exceeds the state, and that AG's opinion found that home rule cities, and the interpretation of the home rule powers, in Title 40, where you deal with municipal government, the AG in 1982 found that home rule cities had the authority to impose traffic fines that exceed the state schedule. Somewhat recently, however, we've had three decisions in criminal court; traffic fines are not a criminal matter per se, but in the nature of someone getting a ticket from a law enforcement officer, we've had three cases, one about 6 years ago, and two in the last 10 months, where district court judges have found that this lack of clarity between the law exists, and has found that, in fact, the cities with home rule powers don't have the authority to exceed the state's schedule. So this bill, as proposed would clarify that, would clearly authorize home rule cities to exceed the state schedule. The struggle that we have is that traffic fines are sort of unique. They may start in municipal court, can be appealed to district court, but if either side doesn't like the district court decision, there is no right of appeal. So, while the city of Fargo, has struggled with the decisions of the district court, it doesn't really have an opportunity to ask for appellate review in front of the ND Supreme Court, like in many other cases you have that right. So it brings us to this need for this bill to clarify that and make it clear, that if approved, the legislature says home rule cities have that authority. There was an amendment that was introduced in the Senate that dealt with the fees that exceed twice the limit, would go to the county fund for schools. I guess the most important part for us, is that we at least clarify the law to allow the imposition of fees in excess of the state limit.

**Chairman DeKrey:** We wouldn't be opening up a can of worms, with the state. We've already given away sales tax. If we allow home rule cities to exceed fines that the state has, aren't we going to set ourselves up in the same situation, for the highway patrol or some other entity comes in here and asks for higher fees that the cities are going to come back and say you can't do that, because then you're going to be encroaching on what we are already paying and we will have to up ours to get it where we want to get it above the state.

**Eric Johnson:** I think the reasoning behind the higher fines is just a combination of, in the mindset of the driver is, if I don't think I'm going to get caught, if the fine is more prohibitive, I might be more inclined to stop at the stop sign, regardless of whether it is a statewide or citywide event. In the opinion of our law enforcement officials, a heightened fine gets the attention of the drivers. We have more congestion in the cities, than maybe in the rural areas. There's some reason for having a disparity between the fines in the cities as opposed to elsewhere in the state.

**Chairman DeKrey:** What is the impetus, is it more safety or revenue generating.

**Eric Johnson:** Well certainly higher fines can generate revenue, revenue is generated by a number of tickets issued, than the amount of fines. The basis for the last increase in fines, approved by the City Commission of Fargo, was clearly based on an analysis of traffic safety.

**Rep. Delmore:** You mentioned two hundred percent in here, if the fine exceeds 200%. Why would a home rule city need fines that are that excessive in comparison with what is in state law. That's a phenomenal increase to me, and I'm not sure that the constituents back home would approve of us increasing fees.

**Eric Johnson:** The current fine structure, as part of the analysis done by the Fargo Police Department in asking for the change in the city of Fargo structure a year or so ago, they looked at various cities, Grand Forks, Valley City, Bismarck, Sioux Falls. The state fine structure is

fairly low, compared to neighboring states; 200% on a \$20 stop sign ticket, would be \$40. I think Grand Forks is somewhere around \$70, and all the other cities, if I recall correctly, are in the range of \$60-70 for a stop sign violation. It's not 200% more under this, it's 200% of the state fees, so it's double. But, the issue that the legislature would with this section, is that there are other cities throughout the state that have fines that exceed the state schedule and certainly there are fines that exceed double the state schedule. I don't know this for a fact, but I have it from anecdotal reports to me, that the state's schedule hasn't been updated in quite a few years, maybe in the range of 25-30 years, so that's perhaps part of the reason for the difference.

**Rep. Klemin:** I'm looking at the state schedule here, it looks to me like it's been updated just about every year, for the past 20 years, every time we've had session, there has been change in here according to the history on this, including in the last session a couple of changes. Has there been any type of analysis of what the penalty fees are around the state in home rule cities as compared to the state fees.

**Eric Johnson:** Yes, again the analysis that I would look to that has been done, at least the Fargo was, a memorandum prepared by the police department, and we looked at various cities and the state schedule. I can provide that to the committee.

**Rep. Klemin:** I guess from a philosophical standpoint, do you think it is appropriate for the motoring public to be able to know what kind of penalty fees there are for violation of various provisions, for example a moving violation under the state schedule is a \$20 fine. It sounds like you're saying that in Fargo it's \$70.

**Eric Johnson:** Actually, Fargo's is currently set at \$100; Grand Forks at \$71, Bismarck at \$50; Moorhead, MN is at \$132.00.

**Rep. Klemin:** To what extent do you think that the public has a right to know what type of fines they are, as they move from one jurisdiction to the next, as apparently there is a lot of variation.

**Eric Johnson:** I'm not sure what the philosophical answer is to that, other than the law is the same. I can say that much. If you don't go through a stop sign, you won't need to worry about how much the fine is. Maybe the best answer is, when we all travel from city to city, we may not know what exactly the fines are, but generally speaking the rules of the road are fairly uniform throughout the country. I understand the nature of the question, but that's how I respond to it.

**Rep. Klemin:** You mentioned that there are a couple of court cases in the last 10 months and the district court held that the city of Fargo cannot exceed the state schedule. Is that what you said.

**Eric Johnson:** That's correct.

**Rep. Klemin:** What was the rationale here regarding those court cases.

**Eric Johnson:** Again, it is just a disparity, or incongruity in the law. The home rule authority given to cities, is one statute and in other place, in the traffic fines itself, it doesn't carve out an exception for the home rule cities so the district court judge, again, in a couple of cases, has found that there is an ambiguity and ruled in favor of the defendant. I should point out that the municipal court judge still imposes the city fines and district court judges throughout the state, that are obviously in the various home rule cities, that have fines that exceed the state, are continuing to impose those higher levels, and even our own district court judges in Cass County, have imposed the city limits rather than the state. But in two particular cases, when argued, it has gone the other way.

**Rep. Klemin:** The opinions in those cases aren't published so that we can see them anywhere, do you have copies.

**Eric Johnson:** I can certainly provide copies, yes.

**Rep. Koppelman:** I'm a little confused. I think they were asking about whether this was a revenue issue or a law enforcement issue. Obviously, I don't think law enforcement in any community is advocating for higher fines. You indicated that the concept was as a deterrent. But then you testified how does the average North Dakotan know what the fines are, how can it be a deterrent if you don't know what they are.

**Eric Johnson:** It may be that there are strangers from out of town that go into a particular city and don't know exactly what the fine structure is, so it might not be acting like a deterrent, but I would dare say that more of the traffic in Fargo, would be Fargo and Moorhead residents, and I can't tell you, off the top of my head, exactly what the fines are, but I have a sense of what they might be, read the paper and see what they might be, you hear about friends who were pulled over and as a result of all of that, you have some collective knowledge. Of course, the law says we're deemed to know all of that, which frankly we don't.

**Rep. Koppelman:** I'm curious, you talk about relying on a 1982 AG's opinion for the authority to have these fines as high as they are. I gathered that's been the case for quite a while. One question is, did the city of Fargo think about seeking out clarification of the law, rather than just relying on that AG's opinion, because some courts disagree with the AG's opinion. Was there any sort of preemptive effort, rather than just reactive effort to make sure that it was correct.

**Eric Johnson:** I'm not aware of any attempt by the City of Fargo, or any other home rule city to seek a bill like this for clarification. I don't know what other thoughts that went into this issue as the fines were raised over time in Fargo.

**Rep. Koppelman:** Is there, do you see any liability exposure here. Are people who receive these tickets, if nothing happens here, are they going to come back and you unjustly fined me and I want my money back.

**Eric Johnson:** Yes, a lawsuit was filed at the beginning of this month, seeking that very thing, presumably, the particular representative plaintiff in this class action lawsuit, had five traffic tickets in Fargo.

**Rep. Koppelman:** For the amount of the loss.

**Eric Johnson:** Yes, the case is young, just started. The person had five tickets and said, that under the Fargo schedule I had to pay this amount and under the state schedule I would have to pay that amount. The complaint is fairly lengthy and complex. It doesn't ask for a specific dollar amount by any means, but it certainly appears that's what they are getting at. To get that difference back from the City of Fargo.

**Rep. Koppelman:** Not damages, though, just the amount of the loss.

**Eric Johnson:** It will be the monetary loss for that, and if the class were approved, it could be, I don't know how far back it would go, all the tickets issued, and then the other possible exposure is that on claims based on section 1983 in the federal code, you could also seek attorney's fees, to be paid.

**Rep. Delmore:** Right now if a highway patrolman arrests someone within the city limits, they do have to stick to what the state says they can collect in fines and fees, is that correct.

**Eric Johnson:** Yes.

**Rep. Boehning:** With higher fees, is there statistically a lower rate of speed in Fargo, or lower DUI rates, how does that compare to the rest of the state. With the higher funds, is there better compliance in Fargo, than in other cities.

**Eric Johnson:** That's a question that has been looked at by our police department, and looked at again somewhat recently, and the answer is, it's hard to tell. Our city looks at what happens across the river in Moorhead and looked at as far away as Sioux Falls to try and determine whether there is some evidence of greater compliance. You can make an argument that there is, I can't recite that myself, but I have been told this by the police chief, that you can make an argument that there is evidence of greater compliance. There is certainly a theory among law enforcement, that does create a greater deterrent to have higher fines, but you also have to look at other factors like how aggressive is the particular police department in pursuing traffic fines. Other cities may not be ticketing traffic as much and those things are difficult to measure. Our police chief has come to the conclusion that there is a beneficial deterrent effect by having a certain level of fine.

**Rep. Klemin:** In Fargo, if you're arrested by the highway patrol for a moving violation within the city limits, you said that the person would be fined the amount set out in state law. Is that correct.

**Eric Johnson:** Yes, I believe so. I probably should have clarified that, I think the question is what is the charge?

**Rep. Klemin:** Is the amount of the fine depend on whether the person is arrested by a highway patrol vs. the Fargo police department.

**Eric Johnson:** I believe the amount of the fine depends on what you're charged with. If you're charged with a city ordinance violation, then there is a fine structure associated with that ordinance. If you're charged with a state violation, then you go to district court on your traffic fine and pay that.

**Rep. Klemin:** So if you run a stop sign in the city of Fargo, and you are arrested by a ND Highway Patrol for doing that, and he charges you under a state statute, then you pay a \$20

fine. But if that same moving violation was observed by a Fargo police department officer, you could be charged a \$100 fine under the city ordinance. It depends on who caught you doing it.

**Eric Johnson:** I can't say that I'm certain about the answer to that. I think that is the case, I think the practice is, however, that there is a practice that deals with that and the highway patrolman that happened to encounter a driver, whether DUI or other offense within city limits, typically calls in a local police officer to make the charge and to follow through as a matter of course.

**Rep. Klemin:** In the new subsection 2a, it seems to say to me that you can't have a fee by ordinance that exceeds the limit set out in the NDCC. Then 2b creates an exception to that for home rule. You're saying that there was a 1982 AG's opinion that says that home rule cities can do this notwithstanding this language in the existing law.

**Eric Johnson:** That is exactly the issue that the district court judges in the recent cases grappled with. There is an entire chapter in the area of century code dealing with municipal government that deals with home rule powers. The analysis that's been done by the AG was that overrides this. There is some evidence for this. There are a number of examples in our legislature where the legislature has carved out specific language that says home rule cities can't go over this amount of fine or can't charge less than this fine. School areas, for example, specific language in there dealing with home rule cities. So there is evidence that the legislative intent had been in the past, to make certain that certain things are not dealt differently by home rule cities. Our interpretation has been that unless it's stated that you don't have home rule city authority, home rule powers chapter gives greater latitude to the home rule cities.

**Rep. Klemin:** Can you get us a copy of the 1982 AG's opinion.



