

OFFICIAL OPINION NO. 04-04, Use of Electric Motor Scooters on Public Highways in South Dakota

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OFFICIAL OPINION NO. 04-04

Use of Electric Motor Scooters on Public Highways in South Dakota

Dear Mr. Fox:

You have requested an opinion of the Office of the Attorney General regarding the following facts:

FACTS:

Over the last several months, the City of Watertown has seen an influx of electric powered two-wheel scooters operated by people of all ages on public and private property. The scooters operating within Watertown are apparently capable of speeds ranging from eight to thirty-eight miles per hour according to advertisements which are included in the opinion request. The electric powered two-wheel scooters described in these advertisements include two-wheeled platforms with a steering device extending up from the platform. Some of these two-wheeled platform scooters also include a seat. Other scooters described in the advertisements include scooters that look like motorized bicycles, mopeds, or motorcycles.

In regard to these facts, you have asked the following question:

QUESTION:

Whether an electric motor scooter may be driven on the public highways of the State of South Dakota?

DISCUSSION:

When reviewing questions concerning the operation of vehicles upon the public highways of this state, two inquiries are necessary. The first inquiry concerns the vehicle--whether the vehicle complies with all appropriate statutes, thus permitting the vehicle to be operated on the public highways of this state. The second inquiry concerns the operator--whether the operator complies with all appropriate statutes, thus permitting the operator to operate the vehicle on the public highways of this state.

Regarding the first inquiry, a review of the definitions used in the traffic regulation statutes is in order:

SDCL 32-14-1. Terms used in chapters 32-14 to 32-19, inclusive, 32-12 and 32-22 to 32-34, inclusive, mean:

.....

(16) "Motorcycle," every motor vehicle designed to travel on not more than three wheels in contact with the ground, except any such vehicle as may be included within the term "tractor" as herein defined;

(17) "Motor vehicle," every vehicle, as herein defined, which is self-propelled;

.....

(37) "Vehicle," every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks; including bicycles and ridden animals.

For ease of discussion, I will refer to all the "electric powered two-wheeled scooters" included in the advertisements submitted as electric motor scooters. An electric motor scooter is a vehicle as defined in SDCL 32-14-1(37) because it is capable of transporting a person on the public highways. An electric motor scooter is also a motor vehicle as defined in SDCL 32-14-1(17) because it is a vehicle that is "self-propelled." An electric motor scooter is propelled by the electric motor powered by the battery pack on the vehicle, and is thus self-propelled.

All of the electric motor scooters in the advertisements have two wheels, one wheel in the front and one wheel in the back. Some of these scooters include seats, while others are operated while standing on a platform. I note that there are other scooters that may have

three wheels. All electric motor scooters are motorcycles as defined in SDCL 32-14-1(16) because they are "motor vehicle[s] designed to travel on not more than three wheels in contact with the ground."

SDCL 32-14-1 provides the definitional framework for many of the traffic regulation laws in this state:

- SDCL ch. 32-14 Traffic Regulation Generally
- SDCL ch. 32-15 Vehicle and Accessory specifications
- SDCL ch. 32-17 Vehicle Lights and Flares
- SDCL ch. 32-18 Brakes and Brake Fluids
- SDCL ch. 32-19 Wheels, Tires, and Special Vehicles
- SDCL ch. 32-12 Driver Licenses and Permits
- SDCL ch. 32-22 Weight, Size and Load Restrictions
- SDCL ch. 32-23 Driving Under the Influence
- SDCL ch. 32-24 Reckless and Unsafe Driving
- SDCL ch. 32-25 Speed Regulation
- SDCL ch. 32-26 Rules of the Road
- SDCL ch. 32-27 Pedestrians' Rights and Duties
- SDCL ch. 32-28 Traffic Control Devices
- SDCL ch. 32-29 Required Stops
- SDCL ch. 32-30 Stopping and Parking Restrictions
- SDCL ch. 32-31 Emergency Vehicles
- SDCL ch. 32-32 School Buses
- SDCL ch. 32-33 Apprehension and Prosecution
- SDCL ch. 32-24 Accidents and Accident Reports

It is significant that an electric motor scooter comes within the definitions of vehicle, motor vehicle, and motorcycle, in SDCL 32-14-1, because these terms are continually referred to in the above provisions.

Motorcycles are further regulated in SDCL ch. 32-20, which includes the following definitions:

SDCL 32-20-1. As used in this chapter, the following words shall mean:

.....

(2) "Moped" a motor driven cycle equipped with two or three wheels. If a combustion engine is used, the maximum piston or rotor displacement shall be fifty cubic centimeters regardless of the number of chambers in such power source. The power source shall be equipped with a power drive system that functions directly or automatically only, not requiring clutching or shifting by the operator after the drive system is engaged.

(3) "Motorcycle" includes motorcycles, motorbikes, mopeds, bicycles with motor attached, and all motor operated vehicles of the bicycle or tricycle type, whether the motive power be a part thereof or attached thereto, and having a saddle or seat with the driver sitting astride or upon it, or a platform on which the driver stands, but excluding a tractor.

.....

(Emphasis added).

The definition of motorcycle in SDCL 32-20-1(3) by its terms expressly includes all of the electric motor scooters described in the advertisements. They are all motor driven two-wheeled vehicles. The fact that some scooters are operated while standing rather than sitting is irrelevant under SDCL 32-20-1(3). This corresponds with the definition of motorcycle in SDCL 32-14-1(16). I note that 2003 House Bill 1110, which failed, would have removed the "platform" language in the motorcycle definition. Because the bill failed, two-wheeled platform scooters are still within the motorcycle definition.

The analysis is not concluded, however, because the next inquiry is whether an electric motor scooter comes within the moped subclassification of a motorcycle. Moped is defined in SDCL 32-20-1(2) as "a motor driven cycle equipped with two or three wheels." Since an electric motor scooter is powered by a motor and is usually equipped with two wheels, it fits within the first sentence of SDCL 32-20-1(2). Whether an electric motor scooter is a moped is controlled by the third sentence of SDCL 32-20-1(2), "[t]he power source shall be equipped with a power drive system that functions directly or automatically only, not requiring clutching or shifting by the operator after the drive system is engaged." An electric motor scooter may only be subclassified as a moped if there is no clutching and no shifting in the drive system. This is a factual determination dependent on whether clutching and shifting is possible.

Whether an electric motor scooter comes within the moped subclassification of a motorcycle or remains within the motorcycle class, the vehicle will have to comply with all appropriate

safety regulations. From a brief review of the advertisements of several electric motor scooters, it appears that they may not comply with the appropriate safety regulations and thus cannot be operated on the public highways of this state.

For example, SDCL 32-20-6.1 and SDCL 32-20-6.2 require the operation of a motorcycle from a seat. SDCL 32-15-8 requires every motor vehicle to be equipped with a mirror. SDCL 32-15-10 requires every motor vehicle to be equipped with a horn. SDCL 32-17-24 requires motorcycles to be equipped with headlamps. SDCL 32-17-24.1 discusses headlamp requirements for mopeds. SDCL 32-17-8 provides the requirements for rear lamps on motor vehicles operated on the public highways of this state. SDCL 32-17-8.1 provides the requirements for brake lights. SDCL 32-18-1 requires every motor vehicle to be equipped with brakes in compliance with SDCL ch. 32-18. The minimum requirement for brakes for a motorcycle is found in SDCL 32-18-6. Mopeds must comply with all motorcycle safety requirements unless there is a specific statutory exception for mopeds.

These provisions provide safety requirements that motorcycles and mopeds must meet if they are to be operated on the public highways of this state. There are other safety requirements that I have not listed, such as eye protection requirements and helmet requirements. Again, from a review of the advertisements, it appears that many of the electric motor scooters that are being discussed may not meet these safety requirements. I further note that these exceptions have changed over the years. One example is the helmet requirements. There is no longer a moped exception to the helmet requirement for persons under 18 operating or riding motorcycles. See SDCL 32-20-4. As such, AGO No. 79-21, which is based upon now repealed provisions of law, is overruled to the extent it is inconsistent with current law.

A law enforcement officer observing an electric motor scooter being used on the public highways should determine whether the vehicle complies with all of the safety regulations found in the South Dakota Codified Laws. If a vehicle does not comply with the required safety requirements, the vehicle is not legal to be operated on the public highways of this state.

There are also federal requirements for motor vehicles:

49 U.S.C. § 30102. Definitions.

(a) General definitions. In this chapter

.....

(6) "motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line.

.....

49 U.S.C. § 30111. Standards.

(a) General requirements. The Secretary of Transportation shall prescribe motor vehicle safety standards. Each standard shall be practicable, meet the need for motor vehicle safety, and be stated in objective terms.

.....

49 U.S.C. § 30112. Prohibitions on manufacturing, selling, and importing noncomplying motor vehicles and equipment.

(a) General. Except as provided in this section, section 30113 and 30114 of this title, and subchapter III of this chapter, a person may not manufacture for sale, sell, order for sale, introduce or deliver for introduction in interstate commerce, or import into the United States, any motor vehicle or motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard prescribed under this chapter takes effect unless the vehicle or equipment complies with the standard and is covered by a certification issued under section 30115 of this title.

.....

49 U.S.C. § 30115. Certification of compliance.

(a) In general. A manufacturer or distributor of a motor vehicle or motor vehicle equipment shall certify to the distributor or dealer at delivery that the vehicle or equipment complies with applicable motor vehicle safety standards prescribed under this chapter.

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Thus, motor vehicles are required to comply with federal safety standards. The federal administrative rules drive this point home:

49 C.F.R. § 567.4. Requirements for manufactures of motor vehicles.

(a) Each manufacture of motor vehicles . . . shall affix to each vehicle a label, of the type and in the manner described below, containing the statements specified in paragraph (g) of this section.

. . . .

(e) The label for motorcycles shall be affixed to a permanent member of the vehicle as close as is practicable to the intersection of the steering post with the handle bars, in a location such that it is easily readable without moving any part of the vehicle except the steering system.

. . . .

(g) The label shall contain the following statements, in the English language, lettered in block capitals and numerals not less than three thirty-seconds of an inch high, in the order shown:

. . . .

(5) The statement: "This vehicle conforms to all applicable Federal motor vehicles safety standards in effect on the date of manufacture shown above." The expression "U.S." or "U.S.A." may be inserted before the word "Federal."

. . . .

These provisions make it clear that a vehicle destined for use on the highways must comply with federal safety standards. See, e.g., 49 C.F.R. §§ 571.3 (definitions), 571.122 (motorcycle brake systems), 571.123 (motorcycle controls and displays), 571.218 (motorcycle helmets). The broad definition of motor vehicles encompasses motorcycles. Whether the electric motor scooters discussed here comply with federal safety laws is a factual determination. Anecdotal evidence indicates that many of these electric motor scooters would not meet the federal safety rules. These federal provisions provide another level of regulation that motor vehicles must meet.

Frankly, most electric motor scooter manufacturers do not attempt to meet the "federal highway safety standards" listed above. They choose instead to disclose this noncompliance in the owner's manual and associated literature provided to the owner at the time of purchase. The literature usually directs the purchaser to review local law before operating the scooter, and warns that the scooter was not designed for and should not be operated on public streets, roads, or highways.

The reference to local law is significant. For example, I note that individuals may be operating electric motor scooters on a sidewalk. This activity is also regulated and such activity is generally prohibited. See SDCL §§ 32-26-21.1 and 32-26-21.2.

The second part of the inquiry is what operator restrictions exist for electric motor scooters that are legal to be operated on public highways of this state. The answer to that question is found in SDCL 32-20-2:

No person may operate a motorcycle, except a moped as defined in § 32-20-1 or a licensed all-terrain vehicle as provided in § 32-20-13, on the public streets or highways without a motor vehicle driver's license or permit upon which a state testing officer has certified that such person is qualified to operate such motorcycle. However, the operator of a moped or licensed all-terrain vehicle shall have a valid motor vehicle operator's license or permit. The department may waive the testing requirements upon completion of a motorcycle safety course approved pursuant to § 32-20-14. A violation of this section is a Class 2 misdemeanor.

SDCL 32-20-2 states that if the vehicle is a motorcycle, the person operating the motorcycle on the public highways must have a driver's license with a motorcycle endorsement. Otherwise, the individual is committing a Class 2 misdemeanor. If the vehicle is a moped as defined by SDCL 32-20-1(2), the person operating the moped on the public highways must have a driver's license. No motorcycle endorsement, however, is necessary to operate a moped. Otherwise, the individual is committing a Class 2 misdemeanor. Further, the operator of an electric scooter must be in compliance with the state's financial responsibility provisions. See SDCL 32-35-113.

In summary, a motorcycle operator must have a driver's license with a motorcycle endorsement while a moped operator must have a driver's license. See AGO No. 79-21. The anecdotal evidence you provided regarding electric motor scooters indicates that these vehicles are being operated by individuals too young to obtain any type of driver's

license. If operators do not have the proper licensure and are driving on public highways, they are violating state law.

To answer your question, all electric motor scooters of two or three wheels come within the definition of motorcycle under SDCL 32-20-1(3). Whether an electric motor scooter comes within the moped subclassification pursuant to SDCL 32-20-1(2) is a factual determination based upon an inspection of the vehicle and the application of SDCL 32-20-1(2).

Regardless of whether an electric motor scooter is a motorcycle or within the moped subclassification, motorcycles and mopeds must comply with all of the appropriate safety requirements of the South Dakota Codified Laws. If law enforcement officers observe one of these vehicles operated on the public highways of this state, which includes city streets, they should inspect the vehicle to determine whether it complies with the appropriate safety requirements.

Finally, whether the vehicle is a motorcycle or subclassified as a moped, the operator of a motorcycle in South Dakota must have a driver's license with a motorcycle endorsement while the operator of a moped in South Dakota must have a driver's license or permit.

Respectfully submitted,

Lawrence E. Long
Attorney General

LEL/DDW/dh

cc Col. Dan Mosteller