

OFFICIAL OPINION NO. 86-05, Off-road vehicle compliance with state laws

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Daniel J. Todd  
State's Attorney  
Walworth County  
Mobridge, South Dakota 57601

OFFICIAL OPINION NO. 86-05

**Off-road vehicle compliance with state laws**

Dear Mr. Todd:

You have requested an official opinion from this office in regard to the following factual situation:

FACTS:

The Mobridge Police Department and Walworth County Law Enforcement Officials have on numerous occasions contacted drivers of off-road vehicles who are using public highways and streets. Many of these off-road vehicles have not complied with traffic regulations, such as speed zone regulations and stop sign controls at intersections. Plus, several of the drivers have been unlicensed or driving while revoked and have attempted to elude police officers when officers initially tried to contact them. In addition, none of these off-road vehicles have been licensed vehicles pursuant to SDCL 32-20-12.

Based upon the above facts, you have asked the following questions:

QUESTIONS:

1. Is the driver subject to the controls of SDCL 32-12 and thus, subject to charges of driving without a license and driving while license is cancelled, suspended or revoked?
2. Is the driver of the vehicle subject to charges of fleeing from police as provided under SDCL 32-33-19?

3. Is the driver of said off-road vehicle subject to penalties for not complying with the requirements of SDCL 32-5-98, which requires vehicles to display a license plate?

4. If the driver of an off-road vehicle does not comply with SDCL 32-20-12, is he then subject to all other traffic regulations in Title 32?

IN RE QUESTION NO. 1:

SDCL § 32-12-22 provides:

No person except those expressly exempted in §§ 32-12-22.1 to 32-12-28, inclusive, shall drive any motor vehicle upon a highway in this state unless such person has a valid license as an operator under the provisions of this chapter. Any person convicted for a violation of this section shall be guilty of a Class 2 misdemeanor.

SDCL § 32-12-65, relating to driving while a license is cancelled, suspended or revoked, provides:

Any person who drives a motor vehicle on any public highway of this State at a time when his privilege so to do is canceled, suspended or revoked shall be guilty of a class 2 misdemeanor.

An off-road vehicle is defined by SDCL § 32-20-1(4)) as follows:

[A]ny self-propelled, two or more wheeled vehicle designed primarily to be operated on land other than a highway and includes, but is not limited to, all terrain vehicles, dune buggies and any vehicle whose manufacturer's statement of origin (MSO) or manufacturer's certificate of origin (MCO) states that the vehicle is not for highway use. Off-road vehicle does not include a farm vehicle as defined in § 32-3-2.4.

The operation of an off-road vehicle is limited by SDCL § 32-20-12 which provides that:

No person may operate on a public street or highway an off-road vehicle except for crossing from one side of the road to the other. . . .

Off-road vehicles may not be registered and licensed for use upon the highways but shall be titled. . . .

An off-road vehicle, as defined above, is not expressly exempt from the application of SDCL § 32-12-22, and to find such a vehicle outside the scope or application of that section, as well as § 32-12-65, it must not fall within the definition of motor vehicle.

The following definitions of motor vehicle are found in Title 32:

SDCL § 32-3-1(1) 'Motor vehicle' as used in said chapters, shall include automobiles, motor trucks, motorcycles, house trailers, trailer coaches, cabin trailers, and all vehicles propelled by power other than muscular power, except traction engines, road rollers, fire trucks, wagons and engines, police and patrol wagons, farm wagons, freight trailers and such vehicles as run only on rails or tracks. (Applicable to Chs. 32-3 through 32-6, unless the context otherwise plainly requires.)

SDCL § 32-5-(1) 'motor vehicle,' shall include all vehicles or machines, trailers, semi-trailers, recreational vehicles, truck tractors, road tractors and motorcycles propelled by any power other than muscular and used upon the public highways for the transportation of persons or property or both;

(Applicable to Ch. 32-5)

SDCL § 32-9-1(3) 'motor vehicle,' all vehicles or machines propelled by any power other than muscular used upon the public highways for the transportation of persons or property, either or both;

SDCL § 32-14-1(2) 'motor vehicle,' every vehicle as herein defined which is self-propelled;

Vehicle is defined by § 32-14-1(1) as every device in, upon or by which any person or property is or may be transported or drawn upon a public highway excepting devices moved by human power or used exclusively upon stationary rails or tracks; provided that for the purposes of said chapters a bicycle or a ridden animal shall be deemed a vehicle. (Applicable to Chs. 32-14 through 32-19 and Chs. 32-22 through 32-34, unless the context otherwise plainly requests.)

As earlier stated, an off-road vehicle is a 'self-propelled two or more wheeled vehicle designed primarily to be operated on land other than a high- way.' In view of the language contained in the definitions of motor vehicle cited above, an off-road vehicle is not classified as a 'motor vehicle' as long as it is operated in a manner consistent with its

designed use. However, upon its use on a public highway, to an extent greater than that allowed by SDCL § 32-20-12, it does fall within the definition of a motor vehicle as provided under Title 32, and accordingly, is subject to the controls of SDCL § 32-12-22 and § 32-12-65.

A similar question was addressed in Attorney General's Opinion 1963-1964 page 189, prior to the enactment of SDCL § 32-12-22.1, which now exempts tractors and other implements used in farm operations from the licensing requirements of Ch. 32-12. The factual situation was as follows: 'driver is operating a farm tractor or other motor vehicle not subject to or not eligible for registration under the laws of this State on the highways of this State and does not hold a driver license to operate a motor vehicle as required by the driver license law, SDC 1960 Supp. 44.03B.' An opinion was requested as to whether 'the operator of a motor vehicle, not subject to or eligible for registration under SDC 1960 Supp. 44.01 and other registration laws of this State, is required to have a valid operator's license in his possession while operating on the public highways?'

After reference to the definitions of motor vehicle existing at that time (which are substantially similar to the present definitions) it was stated that 'any person driving a farm tractor upon the highways must have a valid driver license regardless of the fact that a farm tractor is exempt from licensing and registration under the provisions of SDC 1960 Supp. 44.01.' The mere fact that the vehicle was ineligible for licensing and registration did not prevent application of the licensing requirement when one proceeded to use the vehicle on the public streets or highways.

One of the purposes of the licensing and registration laws, along with other statutes regulating motor vehicle usage, is to insure and maintain safety on the public streets and highways. Ineligibility for licensing and registration is premised upon the fact that the vehicle exempt from such laws is not intended for public highway use. As long as an off-road vehicle is operated consistent with its intended or designed use, registration and licensing is not required. However, upon use of the public streets and highways, the need arises to regulate and restrict operation. The statutes have been sufficiently drafted and enacted to address that need.

I find no merit in the contention that since an off-road vehicle is not eligible for registration and licensing for use upon the highways it is not subject to the restrictions of § 32-12-22 or § 32-12-65. Accordingly, I am of the opinion that if a driver of an off-road vehicle does not

comply with the restrictions of use of public streets or highways, pursuant to SDCL § 32-20-12, that driver is subject to the controls of SDCL Ch. 32-12 and thus subject to charges of driving without a license and driving while license is cancelled, suspended or revoked.

IN RE QUESTION NO. 2:

SDCL § 32-33-18, in pertinent part, provides that:

Any driver of a motor vehicle who intentionally fails or refuses to bring his vehicle to a stop or who otherwise flees or attempts to elude a pursuing police vehicle when given visual or audible signal to bring the vehicle to a stop shall be guilty of a misdemeanor as provided by SDCL § 32-33-19.

The application of that section is limited to only those persons classified as drivers of a 'motor vehicle' as it is used in that section. SDCL § § 32-14-1(1) and 32-14-1(2) are controlling and a motor vehicle is defined thereby as a 'self-propelled' device 'in, upon, or by which any person or property is, or may be transported or drawn upon a public highway.'

The above language can only be interpreted to include any self-propelled vehicle traveling on the public roads within the definition of motor vehicle. Nothing therein indicates that 'designed or intended use' may act to preclude a vehicle from such definition.

Therefore, it is my opinion that any driver of an off-road vehicle, used on a public street or highway, is subject to the demands of SDCL § § 32-33-18 and 32-33-19.

IN RE QUESTION NO. 3:

SDCL 32-5-98 provides, in pertinent part, that:

Except as otherwise specifically provided, no person shall operate or drive a motor vehicle on the public highways of this state unless such vehicle shall have a distinctive number assigned to it by the department of Commerce and Regulation and two number plates bearing such number conspicuously displayed horizontally and in an upright position; one on the front and one on the rear of such vehicle; each securely fastened and such plates shall at all times, as far as is reasonably possible, be kept clear and free of mud, ice or snow so as to be clearly visible. . . .

The definition of motor vehicle found in SDCL § 32-3-1 is controlling with respect to SDCL § 32-5-98. Upon application of the reasoning to your previous questions, I am of the opinion that the driver of an off-road vehicle, not complying with the restrictions of SDCL 32-20-12, is subject to the penalty for not complying with the requirements of SDCL § 32-5-98, which requires vehicles to display a license plate.

IN RE QUESTION NO. 4:

Again, the reasoning set forth in responding to your previous questions applies. It is my opinion that an 'off-road vehicle' becomes a motor vehicle as defined in Title 32 upon its use on the public streets and highways to an extent greater than that provided for under SDCL § 32-20-12. Absent any exemption or contrary intention appearing in the statutory provision or chapter involved, the off-road vehicle must comply with the restrictions and regulations provided for under Title 32 which are imposed on other vehicles using the public streets or highways.

Respectfully submitted,

Mark V. Meierhenry  
Attorney General