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OPINION NO. 85-148

June 20, 1985

Mr. Bill Mills
State Representative
Box 672
Kensett, AR 72082

Dear Representative Mills:

This letter is written in response to your request for an Attorney General's opinion. You stated in your letter that there was some confusion regarding the use of mopeds and scooters and requested an opinion on the following issues:

1. Are mopeds treated differently than scooters? If so, how?
2. Is there a legal definition of a moped and a motor scooter? What are those definitions?
3. What age limitations apply to motor scooters?
4. What equipment requirements apply to each of these vehicles, such as helmets?
5. Under what circumstances may a person ride a three-wheeler or a four-wheeler ATV on city streets?

I must answer the question in two parts. Part I answers your question based on the law prior to June 28, 1985. Part II answers your question based on the law beginning June 28, 1985.

PART I

It is necessary first to discuss the definitions of the various types of motor cycles. Ark. Stat. Ann. §75-1701 et seq (Repl. 1979) contains the following definitions:

(a) "Motor Cycle" shall mean every motor vehicle having a seat or saddle for use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor and a motorized bicycle.

(b) "Motor Driven Cycle" shall mean every motor cycle, including every motor scooter, with a motor which does not displace in excess of 250 cubic centimeters, but such definition shall not include a motorized bicycle.

(c) "Motorized Bicycle" shall mean every bicycle with fully operative pedals for propulsion by human power, an automatic transmission, and a motor with a cylinder capacity not exceeding 50 cubic centimeters, which provides no more than two point zero (2.0) brake horsepower, and is capable of propelling the bicycle at a maximum design speed of no more than 30 miles per hour on level ground.

In response to your first question, I must assume when you refer to mopeds that you are referring to a device that has less than a 50 cc. engine displacement and has fully operative pedals. Furthermore, I will assume a scooter is a device that has an engine displacement of less than 50 cc. but does not have fully operative pedals. With these assumptions in mind, I can say that Arkansas law draws a distinction between mopeds and scooters. A device that has an engine displacement of less than 250 cc. is classified as a motor driven cycle, unless the motor cycle could be classified as a motorized bicycle. For the device to be classified as a motorized bicycle, it must have an engine displacement of less than 50 cc and must have fully operative pedals. With this in mind a motor scooter could have approximately the same engine displacement as a moped but with the absence of the fully operative pedals the motor scooter would be classified as a motor driven cycle. The motor scooter would have to meet all the requirements that are placed on a motor driven cycle.

Assuming that motor scooters do not have pedals, and thus are classified as motor driven cycles, the operator has to be at least 16 years of age and must have an operators license. Ark. Stat. Ann. §75-1710 (Repl. 1979). A motor scooter would also have to meet all equipment requirements of a motor driven cycle which includes:

(a) at least one, but not more than two, headlights which, in the dark, shall omit a white light visible from a distance of at least 500 feet in front;

(b) a red reflector on the rear, which shall be visible from a distance of 300 feet to the rear when directly in front of a law ful upper beam headlamp of a motor vehicle;

(c) a lamp omitting a red light visible from a distance of 500 feet to the rear must be used in addition to the red reflector provided above;

(d) good hand or foot brakes;

(e) a horn in good working order, provided that no bell, siren or whistle shall be permitted;

(f) a standard muffler;

(g) an adequate crash bar for the safety of the rider; and

(h) hand holds and supports for the passengers feet when designed to carry more than one person unless it is equipped with a side car.

(2) from and after the effective date of this Act, all passengers and operators of motor cycles and motor driven cycles used upon the public streets and highways of this State shall be equipped with the following equipment under standards set forth by the Department of Motor Vehicles of the State of Arkansas:

(a) protective head gear;

(b) protective glasses; goggles or transparent face shields.

As to your final question regarding under what circumstances a person may ride a three-wheeler or a four-wheeled ATV on city streets, I refer you to Ark. Stat. Ann. §75-426 (1983 Supp.). This statute allows a city to adopt an ordinance to prohibit or to allow the use of three-wheelers or four-wheelers on city streets. However, I must also point out that a three-wheeler or four-wheeler, in that it does not have fully operative pedals, would likewise fall under the classification of a motor driven cycle and must meet the requirements of a motor driven cycle.

PART II

Act 972 of 1985 alters the answer that I have just given you. This Act did not contain an emergency clause and does not go into effect until June 28, 1985. On that date, Ark. Stat. Ann. §75-701(c) will read as follows:

(c) "Motorized bicycle" shall mean every bicycle with an automatic transmission, and a motor which does not displace in excess of 50 cubic centimeters.

The new definition of motorized bicycle does not contain the requirement of the fully operative pedals. With this new definition in mind, there is no need to draw a distinction between mopeds and scooters. As long as the a device that has a motor which does not exceed 50 cubic centimeters and has an automatic transmission will be classified as a motor bicycle.

This Act also contains a licensing requirement for motorized bicycle operators. Section 4 of this Act provides that the operator of a motorized bicycle must obtain a certificate issued by the Arkansas State Police. No person under the age of ten(10) may obtain a certificate. Prior to obtaining the certificate, the person must take and pass examination regarding the rules of the road and a vision test.

All motorized bicycles are required to have the following equipment:

(a) At least one(1), but not more than two(2), headlights which, in the dark, shall omitt a white light visible from a distance of at least two hundred fifty(250) feet in front:

(b) A red reflector on the rear which shall be visible from a distance of one hundred fity(150) feet to the rear when directly in front of a lawful upper beam headlamp on a motor vehicle:

(c) A lamp omitting a red light visible from a distance of two hundred fifty(250) feet to the rear, must be used in addition to the red reflector provided above:

(d) Good hand or foot brakes:

(e) A horn in good working order, provided that no bell, siren or whistle shall be permitted:

(f) A standard muffler:

(g) It shall be unlawful for any person to operate a motorized bicycle upon interstate highways, limited access highways, or sidewalks and the operators of motorized bicycles shall be subject to all state and local traffic laws, ordinances and regulations.

Your last question was under what circumstances a person may ride a three-wheeler or four-wheeled ATV on city streets. Act 1011 of 1985 makes it unlawful for any person to operate an all-terrain vehicle upon the public streets and highways of this State. This law contains an exception for an ATV that is operated in connection with a farming operation. Thus, in response to your question, after June 28, 1985, an ATV may not be legally operated upon the streets or highways of the State of Arkansas unless it fits within the one narrow exception mentioned above.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Randel K. Miller.

Sincerely,


STEVE CLARK
Attorney General

SC/RKM/ljm