

The State of South Carolina



Office of the Attorney General

Opinion No 86-5
p28

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January 10, 1986

Colonel Phillip L. Meek
Director Law Enforcement Division
South Carolina Department of
Highways and Public Transportation
P. O. Box 191
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Dear Colonel Meek:

In a letter to this Office you questioned whether the intoxicated driver of a moped may be charged with driving under the influence. You defined a "moped" as a two wheel vehicle with pedals and helper motor of one brake horsepower or less which is capable of sustained speeds of 20 MPH or less. 1/

Section 56-5-2930 of the Code states that:

(i)t is unlawful for any person ... who is under the influence of intoxicating liquor, narcotic drugs ... or any other substance of like character ... to drive any vehicle within this State.

Referencing such, a determination must be made as to whether a moped is a "vehicle" for purposes of Section 56-5-2930.

1/ Such description meets the definition of a "bicycle" as set forth in Section 56-5-160 of the Code. However, inasmuch as the term "bicycle" is not included within the definition of "vehicle," as referenced in Section 56-5-2930, the fact that a moped is within the definition of "bicycle" is irrelevant to this opinion.

Section 56-5-120 of the Code defines a "vehicle" as:

(e)very device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks....

Considering such definition, a moped would generally be included within the definition of a device on which an individual may be transported on a highway. While it may be stated that mopeds are not "used exclusively upon stationary rails or tracks", the question remains as to whether a moped may be considered to be a "device moved by human power" so as to exclude it from the definition of a "vehicle" as used in Section 56-5-2930.

In State v. Lyons, 378 A.2d 83 (N.J. Cnty. Crt., 1977), aff'd 386 A.2d 1378 (App. Div. 1978), the court considered the question of whether an individual operating a moped while under the influence could be found guilty of violating the New Jersey statute which provides criminal penalties for an individual "who operates a motor vehicle while under the influence of intoxicating liquor." While the court noted in its opinion that the definition of "motor vehicle" had been amended to specifically exclude "motorized bicycles", it was stated that under the prior definition of "motor vehicle" a moped would have been included. The Court referenced as follows:

(t)he language of the Drunken Driver State, N.J.S.A. 39:4-50, applies to a person "who operates a motor vehicle while under the influence of intoxicating liquor" ... Prior to 1975 the general definitional section of Title 39 defined "motor vehicle" to include "all vehicles propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks." ... The same section defined "vehicle" to include "every device in, upon or by which a person or property may be transported upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks." It is clear that under pre-1975 definitions a moped would be classified as a motor vehicle. 378 A.2d at 84.

As stated, the Court did not consider a moped to be included within the category of vehicles "moved by human power."

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In People v. Jordan, 142 Cal. Rptr. 401 (1977), the California Superior Appellate Court also dealt with the question of whether a driver of a moped is subject to arrest and prosecution for driving under the influence. The California statute stated:

(i)t is unlawful for any person who is under the influence of intoxicating liquor ... to drive a vehicle upon a highway....

"Vehicle" was defined as:

a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power, or used exclusively upon stationary rails or tracks.

"Motor vehicle" was defined as "... a vehicle which is self-propelled." The court in holding that a "moped" was a vehicle within the statute prohibiting driving under the influence stated that "(s)ince a moped is equipped with a motor, it is not a means of conveyance propelled exclusively by human power."

Referencing the above, it is the opinion of this Office that a moped may be considered a "vehicle" as used in Section 56-5-2930. Such a conclusion could particularly be made if the moped which an individual was observed driving while under the influence was not being propelled by human power, i.e., being pedaled, but instead was being propelled by its own motor. To avoid any ambiguity, consideration should be given to amending Section 56-5-120 so as to "except devices exclusively moved by human power."

If there is anything further, please advise.

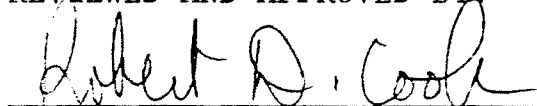
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



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