

1973 WL 26954 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 5, 1973

**\*1 re: No. 139—Highways**

Colonel P. F. Thompson  
State Highway Department  
P. O. Drawer 191  
Columbia, South Carolina 29202

Dear Colonel Thompson:

On June 22, 1973, a statute was enacted that requires motorcycle headlights to be turned on when such a vehicle is operated on public thoroughfares. See 58 STAT. Act No. 355 at 634 (1973). Section 1 of that statute provides:

Any person who operates a motorcycle or motor-driven cycle on public streets or highways shall, while so engaged, have the head-lights of such motorcycle or motor-driven cycle turned on except for those vehicles exempted by Section 46-522 of the 1962 Code.

The Code section cited in the new statute reads in part:

Vehicles which are not kept for use . . . at any time when lighted lamps are required by Section 46-521 need not be equipped with the lighting equipment otherwise required in this article for use at such times . . . . Section 46-521 prescribes the times during which vehicles in this State must have lighted lamps.

You have requested that we advise you as to what an officer should do when he encounters a motorcycle that is being operated on a public thoroughfare without its lights turned on. The exemption prescribed in Section 46-522 gives you concern because an officer ordinarily would not know whether a motorcycle is not kept for use during times when lighted lamps on a vehicle are required.

In our view, when a patrolman observes a motorcycle being driven either on a public street or public highway without its headlights turned on, probable cause exists for the arrest of that person for violation of Act No. 355.

The exception contained within the statute is a matter of defense only; and the burden of establishing that exemption to the operation of the statute in a given case would be upon the defendant. Cf., Reynolds v. State, 11 S.C.L. 365. A patrolman, therefore, need not know at the time of arrest whether the motorcycle is not kept for use by the defendant only during times when lighted lamps are required. It is not necessary for an officer, in other words, to negate the exceptions enumerated in the statute. Cf. also: State v. Solomon, 245 S.C. 550, 141 S.E.2d 818.

Kind regards,

C. Tolbert Goolsby, Jr.  
Deputy Attorney General

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