

**OPINION
69-241**

December 18, 1969 (OPINION)

Mr. Albert J. Hardy

Assistant State's Attorney

Stark County

RE: Motor Vehicles - Snowmobiles - Operation On Public Highways

This is in reply to your letter of December 12, 1969, with regard to the use of snowmobiles on public highways.

You call our attention to the provisions of Chapter 39-24 of the 1969 Supplement to the North Dakota Century Code, and more particularly to Section 39-24-09 thereof. You state that the question has arisen as to the legality of operating a snowmobile upon a street or highway. You indicate your conclusions thereon. You also call our specific attention to the provision of subsection 1 of Section 39-24-09 of the 1969 Supplement to the North Dakota Century Code, which provides, in part:

* * * No person shall operate a snowmobile upon the roadway, shoulder or inside bank or slope of any road, street, or highway in this state except as provided pursuant to this chapter * * *."

Looking to this subsection, it would appear that such operation of snowmobiles is strictly forbidden except as provided pursuant to the chapter.

Looking to subsection 2 of said Section 39-24-09, it would appear that such subsection very definitely authorizes direct crossing of a street or highway within the limitations thereafter set forth.

Looking to subsection 7 of said Section 39-24-09, it would appear that same recognizes the operation of snowmobiles within the right-of-way of any road, street, or highway of this State pursuant to this chapter during times or conditions that warrant the use of lights, and requiring travel in the same direction as the direction of motor vehicles traveling on the side of the roadway immediately adjacent to the side of the right-of-way traveled by the snowmobile.

Subsection 3 of said Section 39-24-09 prohibits operations of snowmobiles upon a public street or highway, unless equipped with lighting and brakes as specified therein, conforming to standards prescribed by rule of the State Highway Commissioner.

Subsection 8 of said Section 39-24-09 makes it unlawful for any person to operate a snowmobile within a highway right-of-way as defined in subsection 37 of Section 24-01-01.1 between April first and November first of any year.

While taken by itself, there can possibly be some argument that

subsection 1 of said Section 39-24-01 of the 1969 Supplement to the North Dakota Century Code contains a general prohibition of the operation of snowmobiles upon the roadway of a road, street or highway, looking to the express permission granted in subsection 2 as to crossing highways, the recognition of the operation of snowmobiles on the right-of-way in subsection 7, the prohibition except when equipped with proper lights and brakes, and the prohibition between April first and November first, it would appear that the Legislature itself did not consider said subsection 1 to be an absolute prohibition but merely considered it a prohibition conditioned upon failure to obey the other requirements of the chapter. On such basis we do not feel that this office can place a stricter construction on this subsection than did the Legislature.

It is therefore, our opinion that where there has been compliance with the other provisions of said Chapter 39-24, subsection 1 of Section 39-24-01 of the 1969 Supplement to the North Dakota Century Code does not prohibit operations of snowmobiles upon the roadway, shoulder or inside bank or slope of any road, street or highway in this State.

We do not by this conclusion mean to state that said subsection 1 of Section 39-24-01 of the 1969 Supplement to the North Dakota Century Code grants permission to utilize snowmobiles upon the roadway, shoulder or inside bank or slope of any road, street or highway of this State without regard to the other requirements of said Chapter 39-24, or other provisions of law with regard to operation of vehicles, highways or safety. For example, we are informed that many forms of snowmobiles suffer serious steering difficulties when operated without sufficient snow upon the ground. While we cannot assume this steering difficulty, as a matter of law, without evidence thereof, we would assume that with evidence as to this fact relevant to the circumstances of travel and actually creating a hazard to person or property of another, same would constitute violation of the provisions of said Chapter 39-24 and other State law.

HELGI JOHANNESON

Attorney General