

Date Issued: March 8, 1982 (AGO 82-16)

Requested by: James M. Vukelic, Hettinger County State's Attorney

- QUESTION PRESENTED -

Whether cities may regulate the operation of snowmobiles upon city streets.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that cities may regulate the operation of snowmobiles upon city streets.

- ANALYSIS -

Section 39-24-08(4) of the North Dakota Century Code, as originally enacted in 1969 North Dakota Session Laws, Chapter 362, Section 8(4), provided:

SECTION 8. RULES AND REGULATIONS.) Pursuant to this Code and this Act, rules and regulations for the regulation and use of snowmobiles shall be adopted as follows:

* * *

4. The governing bodies of political subdivisions shall promulgate rules and regulations for regulating use of snowmobiles in recreation and other appropriate areas under their exclusive jurisdiction. The governing bodies of incorporated cities may, by ordinance, regulate the time of the day during which snowmobiles may be operated within the geographical limits of such city.

Section 39-24-09(1), N.D.C.C., which has not been amended, was enacted as 1969 N.D. Session Laws, Chapter 362, Section 9(1), and provides:

39-24-09. RULES FOR OPERATION OF SNOWMOBILES.

1. 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. No snowmobile shall be operated at any time within the right of way of any interstate highway within this state except for emergency purposes.

A conflict between these two provisions was perceived by officials administering the law, which resulted in two Attorney General's Opinions being issued. In answering a question presented by the Highway Patrol as to whether the provisions of section 39-24-09(1), N.D.C.C., prohibited the use of snowmobiles on city streets, the opinion of December 17, 1969, stated, in part:

It is the opinion of this office that the language [sic] of subsection 1 of section 39-24-09 . . . does not of itself contain an absolute prohibition of the use of snowmobiles upon city streets. Looking to the precise content of chapter 39-24 . . . it is our opinion that a violation thereof will require proof of a violation of another provision of said chapter 39-24. . . .

A second opinion was issued on December 18, 1969, on the same statutory provision concerning its total prohibition against the operation of snowmobiles on city streets. The opinion concluded:

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 [sic] . . . does not prohibit operations of snowmobiles upon the roadway, shoulder or inside bank or slope of any road, street or highway in this State. . . .

In 1971, the Legislature sought to clarify the law pertaining to the use of snowmobiles on city streets by amending section 39-24-08(4), N.D.C.C. This subsection states, in part, as follows:

39-24-08. RULES AND REGULATIONS. Pursuant to this code and this chapter, rules and regulations for the regulation and use of snowmobiles shall be adopted as follows:

* * *

4. . . . The governing bodies of cities may, by ordinance, regulate, restrict, and prohibit the use of snowmobiles when operated within the exclusive jurisdiction of cities.

The effect of the 1971 amendment was twofold: (1) It strengthened the 1969 Attorney General's Opinions concerning the subject matter of the amendment by repealing the limited authority of the cities to regulate the time of day during which snowmobiles could be operated; and (2) it provided cities with complete jurisdiction to govern all aspects of the operation of snowmobiles upon its streets and other areas under its jurisdiction.

Therefore, it is my opinion that a city may regulate the operation of snowmobiles upon its streets.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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