

**OPINION
68-139**

January 29, 1968 (OPINION)

Colonel Ralph M. Wood, Superintendent

Highway Patrol

RE: Motor Vehicles - Snowmobiles - Use of Highways

This office acknowledges receipt of your letter of January 22, 1968, which reads as follows:

"The matter of snowmobiles and/or ski-doo type vehicles using the highway and highway right-of-way is a continuing legal question in my mind.

"The vehicle in question is a self-propelled, track type vehicle designed to travel on snow. The problem for law enforcement is whether or not this vehicle can legally operate on the highway or highway right-of-way.

"Specifically, can this type vehicle be licensed as a motor vehicle and if it cannot be so licensed, may it be legally operated on either the roadway or the right-of-way. Your official opinion on this matter is requested."

Section 39-01-01(32) of the 1967 Supplement to the North Dakota Century Code defines the term "motor vehicle" in the following language:

"'Motor vehicle' shall include every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails;" (Emphasis supplied.)

Subsection 72 of the same section defines the word "vehicle" as follows:

"'Vehicle' shall include every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks."

At first glance it would appear that these two definitions would admit to the public highways almost any contrivance which would convey persons or property providing it were self-propelled.

However, section 39-04-11 of the 1967 Supplement to the North Dakota Century Code provides in part as follows:

"Except as otherwise specifically provided, no person shall operate or drive a motor vehicle on the public highways of this state unless such vehicle shall have a distinctive number assigned to it by the registrar, and two number plates, bearing such number conspicuously displayed, horizontally and in an

upright position, one on the front and one on the rear of such vehicle, each securely fastened, except number plates assigned to a motorcycle or house trailer shall be attached to the rear thereof. * * *

In addition to license plates the laws of the state prescribe certain equipment which must be installed within or upon every motor vehicle moving on the public highways. Chapter 39-21 of the 1967 Pocket Supplement spells out the nature of the equipment required which includes lamps, both front and rear; reflectors; stop lamps and turn signals; braking equipment; horns and warning devices; mufflers; windshield wipers and seat belts for recently manufactured vehicles. Section 39-21-46 makes it a misdemeanor to operate a vehicle without the equipment required by chapter 39-21. It is unlikely that a license plate could be procured from the registrar, or at least retained, if the vehicle were without this equipment.

It is difficult to escape the conclusion that the public highways were constructed, and are being constructed, to accommodate vehicles with wheels which enable the vehicle to maintain a reasonable rate of speed, and that said highways were not constructed for the use of vehicles of a track type variety designed to travel on snow. It might be pointed out that although we had a fairly heavy fall of snow during the past month, the highways were soon open for travel throughout the state.

With reference to the use of snowmobiles or ski-doo type vehicles on the right-of-way, section 24-01-01.1(20) defines the term "highway" in the following words:

"'Highway, street, or road' shall mean a general term denoting a public way for purposes of vehicular travel, including the entire area within the right-of-way. A highway in a rural area may be called a 'road', while a highway in an urban area may be called a 'street.'" (Emphasis supplied.)

It follows that without a license plate, the operator could not drive his vehicle on the right-of-way.

The attitude of the legislature on this subject may be discerned by the fact that at its last session (1967) a bill was introduced in the Senate for an Act to require the registration of snowmobiles, to require operators of snowmobiles to be licensed motor vehicle operators, and to restrict the operation of snowmobiles to the right-of-way portion of the highways in the state of North Dakota. This bill (S.B. 104) was an attempt to give some legal standing to the operation of a snowmobile on public rights-of-way. It failed of passage.

Consequently, we are of the opinion that snowmobiles and/or ski-doo type vehicles may not be licensed as a motor vehicle, and since it cannot be so licensed, it may not be legally operated on either the roadway or the right-of-way of the public highways of this state.

HELGI JOHANNESON

Attorney General