

**OPINION
69-236**

October 1, 1969 (OPINION)

Mr. Charles Bosch

Registrar

Motor Vehicle Department

RE: Motor vehicles - Snowmobiles - Assessment for Unsatisfied Judgment

In your letter of October 1, 1969 you raised a number of questions pertaining to snowmobiles. The answers are set forth in the numerical sequence in which you ask them.

The first question required a determination as to whether or not the term snowmobile was also embraced within the definition of a motor vehicle. Section 39-24-01, subsection 2 of the N.D.C.C. defines a snowmobile to be:

'Snowmobile' means a self-propelled vehicle designed for travel on snow, ice, or natural terrain and steered by wheels, skis, or runners."

Section 39-01-01, subsection 32 defines a motor vehicle:

'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;"

A reading of the other definitions contained in Section 39-01-01, supra, reveals the rather broad spectrum of vehicles encompassed by the term "motor vehicles". In subsection 3, a "bus" is defined as a motor vehicle; in subsection 17, a "farm tractor" is defined as a motor vehicle; in subsection 21.1a "house car" is defined as a motor vehicle; in subsection 32a, a "motorcycle" is defined as a motor vehicle; in subsection 51 a "road tractor" is defined as a motor vehicle; in subsection 54 a "school bus" is defined as a motor vehicle; in subsection 65a "trackless trolley coach" is defined as a motor vehicle; in subsection 69 a "truck" is defined as a motor vehicle; and in subsection 70 a "motor truck" is defined as a motor vehicle.

It is noted that all of the foregoing definitions have additional criteria and distinction that would provide for the classification of the particular vehicle; nevertheless, they would be considered as motor vehicles.

The definition as provided for snowmobiles in Section 39-24-01, subsection 2 would be subject to the definition of a motor vehicle. Section 39-01-01 provides its own applicability, wherein it says:

39-01-01. Definitions. In this title, unless the context or subject matter requires otherwise:"

By its own definition, a snowmobile is " * * * a self-propelled vehicle". Since every vehicle which is self-propelled has been defined as a motor vehicle, it follows that a snowmobile would also be included within the broader term "motor vehicle".

In *Grace v. United States* 4 F.2d. 658, 659, the Fifth Circuit Court of Appeals observed:

The term 'motor vehicle' by the terms of the act, includes 'automobile', 'automobile truck', and virtually every conceivable variety of self-propelled vehicle on land."

The provision under consideration in the *Grace* case, *supra*, provided:

* * * 'motor vehicle' includes any automobile, automobile truck, automobile wagon, motorcycle, or any other self-propelled vehicle designed for running on land but not on rails." 18 U.S.C. Section 23.

In *City of Norwalk v. Auction City, Inc.* 8 Cal. Rptr. 781, the California Court found that a two horsepower race car, used on a miniature race track by children between the ages of 4 and 12 were motor vehicles. The Court stated:

* * * Since the usual understanding of the term 'motor vehicle' embraces a vehicle which is self-propelled and by which a person may be carried."

See also 50 C.J.S. Section 1 or 7 Am. Jur.2d. Section 1.

It would, therefore, be my opinion that a snowmobile falls within the statutory definition of a motor vehicle.

Having determined that a snowmobile is a motor vehicle, your second question asked in substance whether or not a snowmobile would be subject to the Unsatisfied Judgment Fund assessment. The imposition section is found in Section 39-17-01 of the North Dakota Century Code.

Additional registration fee. At the time of registering a motor vehicle the owner shall pay to the motor vehicle registrar in addition to the registration fees, a fee of one dollar for each motor vehicle registered."

Section 39-24-03 of the North Dakota Century Code provides for the registration of snowmobiles, making such registration mandatory.

Chapter 39-17 of the North Dakota Century Code, while not specifically stating it, does reveal a legislative concept for providing a remedy and redress for injuries and damages sustained through the fault of an uninsured or judgment-proof motorist. It also establishes the criteria that must be met before resort can be made to the fund for recovery of damages. Those requirements are found in Sections 31-17-03 and 04. In brief, the requirements are that a judgment be recovered for more than \$300 damages for bodily injuries or death resulting from the ownership, maintenance,

operation or use of a motor vehicle.

In Pearson v. State Unsatisfied Judgment Fund 114 N.W.2d. 257, 261, our Supreme Court quoted from a New Jersey case that had considered the intent of a similar act.

* * * to provide a measure of relief to persons who sustain losses inflicted by financially irresponsible or unknown owners and operators of motor vehicles, where such persons would otherwise be remediless. * * *

The case of Benson v. Schneider 68 N.W.2d. 665, indicates that the fund is supported by an assessment made against all motor vehicles.

* * * the fund is created by the annual extraction of one dollar from the owner of each motor vehicle registered."

No exceptions to this one dollar assessment have been provided for by the Legislature, within the provisions of Chapter 39-17.

By virtue of registering a snowmobile, Section 39-24-09 grants the owner or operator certain privileges to use the streets and highways of this State. The mere exercise of this privilege exposes the owner or operator of a snowmobile to other vehicular traffic, thereby creating the potential and hazard of a motor vehicle accident that can result in a death or personal injuries to the operator of a snowmobile. There is no sound reason why the operator of a snowmobile should be denied participation in the Unsatisfied Judgment Fund, providing the statutory participation requirements are met, and thereby be left without recourse by the negligent act of an individual who is financially irresponsible.

Therefore, it would be my opinion that a snowmobile is a motor vehicle that is subject to the one dollar assessment for the Unsatisfied Judgment Fund.

You concluded your request with your third inquiry regarding the applicability of the motor vehicle dealers licensing law to snowmobile dealers.

For purposes of the Motor Vehicle Dealer Licensing Act, a dealer is defined the same as provided for in Section 39-04-01, subsection 1, of the North Dakota Century Code. See Section 39-22-01.

1. 'Dealer' shall mean every person, partnership or corporation engaged in the business of buying, selling or exchanging motor vehicles, or who advertises, or holds himself out to the public as engaged in the buying, selling or exchanging of motor vehicles or who engages in the buying of motor vehicles for resale. * * *

The first impression upon reading Section 39-04-01, subsection 1, supra, would be that snowmobile dealers would be subject to licensing as motor vehicle dealers. However, a complete reading of Chapter 39-22 reveals certain inconsistencies with Chapter 39-24, which indicates the lack of legislative intent to categorize snowmobile dealers as motor vehicle dealers.

Under Section 39-22-02, dealer plates are available at a price of \$25 for the initial set. The intended use of these license plates is set forth later in the same section, where it states:

* * *Such number plates may be used on any car owned by the dealer. * * *" (emphasis added)

Section 39-24-03 of the North Dakota Century Code provides for the registration of snowmobiles owned by dealers. The fee for such registration is two dollars. The use of such registration is the last paragraph of Section 39-24-03:

* * * Upon application for registration as prescribed in this section, any snowmobile dealer as defined in Section 39-24-01, shall be issued registration numbers distinctively marked as dealer's registration numbers upon payment of the appropriate fee as prescribed in this section. Such dealer's registration number shall be used only on snowmobiles owned by the dealership."

Here the Legislature has obviously distinguished between the two types of dealers, not only as to the amount of fee payable by the dealers, but also as to the use that can be made of the registration.

Within the provisions of Chapter 39-22, motorcycle dealers are brought within the act by a special provision. Section 39-22-03 states:

MOTORCYCLE DEALERS LICENSES - FEES. A motorcycle dealer shall pay a license fee of five dollars for each set of motorcycle license plates issued to him. * * * the applicant shall submit such information as said registrar may require, upon blanks provided by the registrar for such purposes."

No similar provision pertains to snowmobile dealers under Chapter 39-22 or Chapter 39-25.

Further, the bonding of motor vehicle dealers, under Section 39-22-05, provides indemnity for loss or damages from, among other things:

39-22-05. BOND REQUIRES. * * * indemnifying any person dealing or transacting business with said dealer in connection with any motor vehicle from any loss or damage occasioned by the failure of such dealer to comply with any of the provisions of title 39, including, but not limited to, the furnishing of a proper and valid certificate of title to the motor vehicle
* * *"

Chapter 39-24 does not provide for the registrar to issue a title to a snowmobile, the same being registered only. It is obvious that the Legislature could not have intended the bonding provision of Section 39-22-05 to apply to snowmobile dealers, in absence of any requirements as to the issuance of a title to such vehicle.

Sections 39-22-06 and 39-22-09 of the Motor Vehicle Dealer Licensing

Act pertain to used car lots and the licensing of used cars held by a dealer.

39-22-06. USED CAR LOTS - LOCATION. A registered dealer as described in the chapter may establish open used car lots.
* * *"

39-22-09. DEALER TO FILE LIST OF USED MOTOR VEHICLES WITH REGISTRAR - FEES PAID ON USED CARS BY DEALERS - DELINQUENCY - PENALTY.

1. On or before February fifth of each year, a licensed dealer shall file with the registrar a list and a description of all used motor vehicles on hand on February first of each year.

Such used cars need not be licensed until July first. * * * "

In the foregoing, the Legislature speaks of used car lots and the registration of the same. It is notable that before anyone, including a new or used car dealer, can register a motor vehicle it must be titled before such registration can be made. See Section 39-04-02, subsections 2 and 4, N.D.C.C.

The express language in these two sections concerning used cars, and the registration requirements further show the lack of legislative intent to include snowmobile dealers within Chapter 39-22 of the North Dakota Century Code.

In view of the foregoing discrepancies, the separate legislation concerning snowmobile dealers and the lack of legislative intent in Chapter 39-24 clearly demonstrating that a snowmobile dealer is to be included as a motor vehicle dealer, it would be my opinion that a snowmobile dealer should not be considered as a motor vehicle dealer for licensing purposes and the provisions of Chapter 39-22 would not be applicable to snowmobile dealers.

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Attorney General