

Opinion No. 48

MOTOR VEHICLES: Motorcycles and Motor-Driven Cycles; operator's license—LICENSES; Motor Vehicles; operator's license; motorcycles and motor-driven cycles—Sections 31-119, 31-120, 31-125, 31-129, and 32-2102, Revised Codes of Montana, 1947.

Held: The operator of a motorcycle or motor-driven cycle while operating the same on the public highways of this state must be licensed under Sections 31-125 or 31-129, RCM, 1947, as amended, unless such operator is exempt from license under Section 31-126, RCM, 1947, as amended.

September 28, 1962

Mr. O. J. Paulson
Sweet Grass County Attorney
Big Timber, Montana

Dear Mr. Paulson:

You have asked whether or not it is necessary for the operator of one of the currently popular low-horsepowered motorbikes or motor scooters to be licensed as a motor vehicle operator or chauffeur or the holder of an instruction permit or temporary license while operating the same on highways of this state.

The Montana Uniform Motor Vehicle Operators and Chauffeurs License Act (Chapter 267, Laws of 1947, now codified as Sections 31-117 to 31-162, Revised Codes of Montana, 1947, as amended) was enacted, as its name implies, to make uniform and consistent the statutes prescribing qualifications for drivers on our highways. In this act, definitions pertinent to your question are set out as follows:

“(Section 31-119) (a) Vehicle. Every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(b) Motor vehicle. 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.

(Section 31-120) (b) Operator. Every person, other than a chauffeur, who drives or is in actual physical control of a motor vehicle upon a highway or who is exercising control over or steering a vehicle being towed by another vehicle.”

Section 31-125, Revised Codes of Montana, 1947, provides that no person except those expressly exempted shall drive any motor vehicle upon a highway unless such person has a valid Montana license as an operator or chauffeur. As your question refers to operation of particular types of motor vehicles and no express exemption from licensing requirements is based on the type of motor vehicle operated, I assume that the operators in question are not exempt. The intent of the law, as you stated, appears to be that operators of the subject vehicles on the highways of this state must be licensed as required by Section 31-125, supra, or by Section 31-129, Revised Codes of Montana, 1947. (Instruction permits and temporary licenses.)

You state, however, that owing to the definitions in Section 32-2102, Revised Codes of Montana, 1947, as amended, a part of the Uniform Act Regulating Traffic on Highways, doubt has arisen as to whether or not these small motored cycles are "motor vehicles". The definitions in Section 32-2102, supra, of "vehicle" and "motor vehicle" are identical to those contained in Section 31-119, supra, but are followed by definitions of "motorcycle" and "motor-driven cycle" as follows:

"(c) Motorcycle. Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, but excluding a tractor.

(d) Motor-Driven Cycle. Every motorcycle, including every motor scooter, with a motor which produces not to exceed five (5) horsepower, and every bicycle with motor attached."

As is apparent, "motor vehicle" includes "motorcycle" and "motor-cycle" includes motor-driven cycle." Our legislature apparently felt that for purposes of regulating traffic on the highways, sub-classes of motor vehicles had to be defined. For the purpose of licensing operators, however, no such intent appears.

It is thus my opinion that it is necessary for the operator of a motorcycle or motor-driven cycle, in which classes the vehicles you speak of would necessarily fall, to be licensed as provided in Sections 31-125 or 31-129, Revised Codes of Montana, 1947, as amended.

Very truly yours,
FORREST H. ANDERSON
Attorney General