

**VOLUME NO. 36**

**Opinion No. 86**

**MOTOR VEHICLES — Registration, self-propelled wheelchairs;  
MOTOR VEHICLES — Driver's license, operation of self-propelled  
wheelchair; Sections 53-104, 11-911.1, 11-911.2, Revised Codes of  
Montana 1947, Chapter 369, Laws of 1974.**

**HELD: 1. On the facts given, a self-propelled golfcart type vehicle used  
by an invalid individual is exempt from the motor vehicle  
registration provisions of Title 53, ch. 1, R.C.M. 1947.**

**2. Any invalid operator of a self-propelled wheelchair or similar vehicle under Chapter 369, Laws of 1974, is exempt from the driver's license provisions of Title 31, ch. 1, R.C.M. 1947, but may be required to obtain a city permit to operate such vehicle.**

June 9, 1976

Mr. William M. Solem  
Blaine County Attorney  
Courthouse  
Chinook, Montana 59523

Dear Mr. Solem:

You have requested my opinion on these questions:

1. Is a self-propelled golfcart type vehicle used by a certain invalid individual exempt from the motor vehicle registration provisions of Title 53, chapter 1, R.C.M. 1947?
2. In order to operate such vehicle on city streets, must such individual obtain a driver's license pursuant to Title 31, chapter 1, R.C.M. 1947?

1. Section 53-104, defining "motor vehicle", was amended by Section 1, Chapter 369, Laws of 1974, to read as follows:

53-104. "Motor vehicle" defined. The word "motor vehicle" as used in this **Title** shall include trailers, semitrailers, automobiles, and all other vehicles propelled by their own power, used upon the public highways of the state, excepting steam or gas tractors, or **self-propelled wheelchairs or similar vehicles operated by invalids**. (amendatory language underscored)

The obvious intent of this amendment was to exempt "self-propelled wheelchairs and similar vehicles operated by invalids" from the registration provisions of Title 53. "Similar vehicles" certainly seems broad enough to embrace the golfcart type vehicle used by the individual in question. See **Burke v. Sullivan**, 127 Mont. 374, 378, 265 P.2d 203 (1954). On the basis of the facts described in your letter, I conclude that such vehicle qualifies as an exception under section 53-104 and need not be registered as a motor vehicle as a condition precedent to being operated on city streets.

2. Sections 2 and 3 of Ch. 369, codified as sections 11-911.1 and 11-911.2, state:

11-911.1. Electric wheelchairs may be operated on streets. A person who by reason of physical disability is unable to move about as a pedestrian may operate a self-propelled wheelchair or similar vehicle, during daylight hours, on the streets of a city or town. When operated on public streets, such vehicles must display the slow moving equipment emblem required in section 32-31-130(1), or be equipped with a windwhip displaying a red flag.

11-911.2. City and towns may regulate. Use of self-propelled wheelchairs and similar vehicles may be regulated by cities and towns.

While Ch. 369 expressly exempts self-propelled wheelchairs and similar vehicles from registration under Title 53, it is ambiguous by its silence with respect to driver's license requirements under Title 31. Heretofore Title 31 exclusively has dealt with these requirements. However, the history of Ch.369 reflects the legislature's intent to exempt invalid operators of such vehicles from the usual driver's license requirements. It is an accepted rule of statutory construction in Montana that in cases of doubt the legislative history of an act may serve as an extrinsic aid to interpretation. **Melzner v. Northern Pacific Ry. Co.**, 46 Mont. 162, 179-180, 127 P. 146 (1912); **Guillot v. State Highway Commission**, 102 Mont. 149, 155, 56 P.2d 1072 (1936).

Ch. 369 was introduced in the 43rd Legislature as House Bill No. 822. It passed the House of Representatives consisting of two sections, the first amending section 53-104, and the second providing for an "electric wheelchair license" as follows:

Section 2. Electric wheelchair license. A person who by reason of physical disability is unable to move about as a pedestrian may apply to the division of motor vehicles for a special license to operate a self-propelled wheelchair or invalid tricycle...The division shall issue such a license without charge if the applicant demonstrates to the division that he is able to operate his vehicle in a safe manner and that the vehicle is equipped with visible brake lights and turn signals, and properly displays the slow-moving equipment emblem required in section 32-21-130(c)... 822, Third Reading.

But the just-quoted language was rejected by the Senate, which deleted all references to a "wheelchair license". Senate Committee of the Whole Amendment to House Bill No. 822, February 9, 1974. (Minor changes in phraseology in both the title and body of H.B. 822 were also made.) The Senate rewrote Section 2 in substantially its present form and added Section 3.

In my view, the effect of all this was to remove such disabled persons from the licensing authority of the Highway Patrol and place them solely under the regulatory power of municipalities. Thus, a city, if it wished, could require a disabled person to obtain a city permit to operate a motorized wheelchair or like device on its streets. Such a permit might be issued on any reasonable condition, for example, the operator's ability to drive his vehicle responsibly and to properly equip it (perhaps even beyond the statutory minimum). In this way, the safety of the public would be promoted and a degree of control over the operator maintained.

It should be emphasized a municipality's power to regulate the use of self-propelled wheelchairs and similar devices has limits. As stated by a New York court, power to regulate necessarily implies power to permit conditionally the doing of a thing, but ordinarily does not include power to prohibit or suppress. **People v. Martins of Hempstead, Inc.**, 286 N.Y.S. 2d 766, 769, 55 Misc. 2d 802 (1967). See also **City of Butte v. Paltrovich**, 30 Mont. 18, 22, 75 P. 521 (1904). Were it otherwise, a municipality, by generally prohibiting wheelchair

traffic, could arbitrarily defeat the objective of Ch. 369 that disabled persons have the opportunity for self-transportation on city streets.

**THEREFORE, IT IS MY OPINION:**

1. On the facts given, a self-propelled golfcart type vehicle used by an invalid individual is exempt from the motor vehicle registration provisions of Title 53, ch. 1, R.C.M. 1947.
2. Any invalid operator of a self-propelled wheelchair or similar vehicle under Chapter 369, Laws of 1974, is exempt from the driver's license provisions of Title 31, ch. 1, R.C.M. 1947, but may be required to obtain a city permit to operate such vehicle.

Very truly yours,

**ROBERT L. WOODAHL**  
Attorney General