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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

November 19, 2004

Marcia S. Adams, Executive Director
Department of Motor Vehicles
Post Office Box 1498
Columbia, South Carolina 29216

Dear Ms. Adams:

In a letter to this office you questioned whether low-speed vehicles can be operated on South Carolina roads and whether the Department of Motor Vehicles is authorized to register and license low-speed vehicles. In responding to your request, we requested and have received a memorandum from your general counsel addressing these same questions.

S.C. Code Ann. § 56-3-20 defines "motor vehicle" as "...every vehicle which is self-propelled, except mopeds, and every vehicle which is operated by electric power obtained from overhead trolley wires, but not operated upon rails." S.C. Code Ann. § 56-3-110 requires that all motor vehicles be licensed and registered before being operated on public highways in this State in stating that

Every motor vehicle, trailer, semitrailer, pole trailer and special mobile equipment vehicle driven, operated or moved upon a highway in this State shall be registered and licensed in accordance with the provisions of this chapter. It shall be a misdemeanor for any person to drive, operate or move upon a highway or for the owner knowingly to permit to be driven, operated or moved upon a highway any such vehicle which is not registered and licensed and the required fee paid as provided for in this chapter.

Exemptions to such requirement for registration and licensing are provided for golf carts, various other specific vehicles and vehicles of certain foreign vehicles of nonresident owners. See: S.C. Code Ann. §§ 56-3-115, 56-3-120, 56-3-130, 56-3-140 and 56-3-150. None of the various exemptions are applicable to low speed vehicles.

Mr. Valenta notes that

(h)istorically,...the common sense line that divided what could and could not be driven on public highways was whether the manufacturer certified the vehicle as

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being roadworthy. If the manufacturer did not certify a product as roadworthy, DMV would not register it.

He noted the example of the all-terrain vehicles (ATVs) which the manufacturer specifically states are for off-road use only.

Mr. Valenta's memorandum referenced the rulings of the National Highway Traffic Safety Administration (NHTSA) stating that

In 1998, the National Highway Traffic Safety Administration (NHTSA) passed a Final Rule (63 FR 33913) regarding Low Speed Vehicles (LSVs). That rule established Federal Motor Vehicle Safety Standard No. 500 (49 CFR 571.500). The Summary of the Final Rule stated that the rule was needed so that vehicle manufacturers could sell vehicles that were slower than regular passenger vehicles and that could not meet federal safety requirements of passenger vehicles. In addition, the Summary stated that these vehicles would be used in "controlled environments", and that assumption appears repeatedly throughout the rule.

There are now only limited legislative controls over operating environments for motor vehicles that are subject to registration and licensing. That is, if the Department registers and licenses low-speed vehicles for use on South Carolina roads under existing statutes, these vehicles would not have restrictions. That is, most assumptions used by NHTSA in its Final Rule do not exist in South Carolina statutes. The Department must therefore determine whether the Final Rule and Safety Standard 500 apply to South Carolina where there is a vacuum in state statutes. The question can be viewed inversely as whether the federal safety standard requires that South Carolina allow these vehicles on its roads without restriction.

Mr. Valenta further notes that the General Assembly, while addressing the use of golf carts on public roads in this State, has not taken any action with regard to low speed vehicles. He states that "(f)or every other sort of vehicle, the Legislature has issued some level of instructions about how the DMV should deal with those vehicles, delegating the remaining authority to the DMV. The Legislature has been silent on the issue of LSVs."

Mr. Valenta concludes that registering and licensing of low speed vehicles without any guidance from the General Assembly

...would be an unauthorized exercise of the Department's delegated authority. Therefore, I conclude that such vehicles should not be registered and licensed, and without registration and licensing they cannot be driven on public roads.

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Noting the findings of the NHTSA set forth by Mr. Valenta and the lack of action by the General Assembly with regard to LSVs, this office concurs with Mr. Valenta's conclusions.

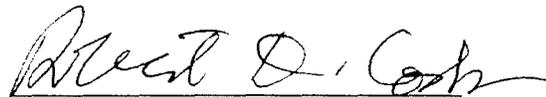
If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General