

1979 S.C. Op. Atty. Gen. 216 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-136, 1979 WL 29138

Office of the Attorney General

State of South Carolina

Opinion No. 79-136

December 11, 1979

***1 SUBJECT: Bicycle—Motorized**

A municipality may require operators of motorized bicycles to wear protective helmets.

To: The Honorable Rex Lyle Carter
Speaker of The House

QUESTION PRESENTED:

You have requested an opinion as to the validity of a municipal ordinance which requires the operator of a motorized bicycle on city streets to wear a protective helmet.

AUTHORITIES:

[Code of Laws of South Carolina § 5-7-30 \(Cum. Supp. 1978\)](#)

[Code of Laws of South Carolina § 56-5-160 \(1976\)](#)

[Code of Laws of South Carolina § 56-5-710\(8\), \(1976\)](#)

[Code of Laws of South Carolina § 56-5-3510 \(Cum. Supp. 1978\)](#)

[Code of Laws of South Carolina § 56-19-10\(2\) \(1976\)](#)

[Hall vs. Burg, 206 S.C. 173, 33 S.E. 2d 401 \(1945\)](#)

[State vs. Mosely, 174 S.C. 187, 177 S.E. 156 \(1934\)](#)

[State vs. Perry, 138 S.C. 329, 136 S.E. 314 \(1927\)](#)

DISCUSSION:

Pursuant to South Carolina Code of Laws §§ [56-5-160 \(1976\)](#), [56-5-3510 \(Cum. Supp. 1978\)](#), and [56-19-10\(2\) \(1976\)](#), pedal bicycles with helper motors rated less than one brake horsepower which produce only ordinary pedaling speeds up to a maximum of twenty (20) miles per hour are classified for purposes of the motor vehicle statutes as bicycles. As bicycles, these devices are exempt from state licensing, registration requirements and the operators of such are not required to have state issued drivers licenses.

However, [Code of Laws of South Carolina § 56-5-710\(8\), \(1976\)](#), gives local authorities within the reasonable exercise of the police power the right to regulate the operation of bicycles with respect to streets and highways under their

jurisdiction. While this statute does not specifically grant municipalities the authority to require that the operators of motorized bicycles wear protective helmets, such authority may be found in the municipality's police power. The regulation of traffic by local authorities on all the streets within their boundaries is a power naturally and ordinarily vested in municipalities and a legislative intent to take it away and confer it upon some other authority must be clearly expressed. See, Hall vs. Burg, 206 S.C. 173, 33 S.E. 2d 401 (1945).

The general powers of municipalities are presently codified in Code of Laws of South Carolina § 5-7-30 (Cum. Supp. 1978), and include ‘ . . . authority to enact regulations, resolutions and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of such powers in relation to roads, streets . . . in such municipalities or respecting any subject as shall appear to them necessary and proper for the security, general welfare . . . or for preserving health, peace, order and good government therein’ The breadth of the power of local authorities in the area of traffic safety and control is demonstrated by the former ability of municipalities to require local motor vehicle drivers licenses. These licenses have since been prohibited but the prior situation provides an excellent analogy for the present discussion.

*2 Before the enactment of the first state licensing requirement in 1930, several municipalities had local ordinances requiring that residents possess a local license in order to operate a motor vehicle. Such provisions were upheld as lawful in the case of State vs. Perry, 138 S.C. 329, 136 S.E. 314 (1927). After the first statewide licensing statute was enacted and until its amendment in 1959 to prohibit local licenses, many municipalities continued to require local residents to have local drivers licenses. These local ordinances were again upheld as lawful, despite the existence of the state statute. State vs. Mosely, 174 S.C. 187, 177 S.E. 156 (1934). The Court found authority for the local ordinances in the municipality's police power necessary to regulate traffic and the need to protect the public health, safety and welfare. Analogizing the automobile cases to the present motorized bicycle situation it would seem that where a municipality determines that the interests of public safety require operators of motorized bicycles to wear protective helmets, such municipality may enact an ordinance requiring operators of motorized bicycles to wear protective helmets in order to ride on the municipality's streets.

This opinion should not be construed as addressing the authority of any particular municipality, but is concerned only with general municipal authority. As for any particular local government it is left to the city attorney to determine such local government's specific authority.

CONCLUSION:

Where a municipality determines that the interests of public safety require operators of motorized bicycles to wear protective helmets, such municipality may enact an ordinance requiring operators of motorized bicycles to wear protective helmets in order to ride on the municipality's streets.

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