

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2019-010

TO: Mayor, City Council, Mike Brady, Scott Hoffman, Mike Brady, Chris Odlin, Richard Stepper, Kevin Slovarp, Troy Monroe, Ben Weiss, Greg Amundsen, Jeremy Keene, Chad Pancake, Brian Hensel, Marty Rehbein, Kirsten Hands, Kelly Elam, Department Attorney

FROM: Jim Nugent, City Attorney

DATE April 25, 2019

RE: Pursuant to Montana traffic regulation law, while generally a person may ride a bicycle on a public sidewalk, state law provides that a person may not ride a bicycle on and along a public sidewalk where riding of the bicycle is prohibited by official traffic control devices.

FACTS:

Escooters and ebicycles are a modern means of transportation that are currently growing in popularity and are likely to appear in Missoula in the near future. Montana state law has not yet specifically addressed scooters or ebicycles. Montana state law does recognize that bicycles as well as mopeds when the moped is being operated "under human propulsion" may be operated on public sidewalks unless their use is prohibited on the public sidewalk by official traffic control devices. Pursuant to section 61-8-375 MCA a person may not operate a motorized nonstandard vehicle on ways of the state open to the public unless the operation is specifically authorized by ordinance or regulation passed by the local government.

ISSUE:

Pursuant to Montana traffic regulation laws for vehicles, when may a bicycle or moped be operated on a public sidewalk?

CONCLUSION:

Generally pursuant to section 61-8-608 MCA it is recognized that a person may operate a bicycle or moped on a public sidewalk in Montana as long as there are no official traffic control devices prohibiting such usage at that specific location and as long as the moped is only being operated by human propulsion.

LEGAL DISCUSSION:

Montana state vehicle traffic regulation law, section 61-8-608 MCA is entitled "BICYCLES OR MOPEDS ON SIDEWALKS AND BIKE LANES". Pursuant to section 61-8-608 MCA, while

Montana state law recognizes that bicycles and mopeds may be operated on public sidewalks, there is a provision in subsection 61-8-608(2) MCA that states that “A person may not ride a bicycle or moped on and along a sidewalk or across on or along a crosswalk WHERE THE USE OF THE BICYCLE OR MOPEL IS PROHIBITED BY OFFICIAL TRAFFIC CONTROL DEVICES”. (emphasis added)

Further, subsection 61-5-608(3)(b) MCA states that “a moped may be operated on and along a sidewalk or a bicycle path ONLY UNDER HUMAN PROPULSION and may not be operated on or along a sidewalk or bicycle path if the moped is under power from an independent power source.” (emphasis added)

61-8-608. Bicycles or mopeds on sidewalks and bike lanes. (1) Subject to the provisions of subsection (3)(b), a person operating a bicycle or moped on and along a sidewalk or across a roadway on and along a crosswalk shall yield the right-of-way to any pedestrian and shall give an audible signal before overtaking and passing any pedestrian.

(2) A person may not ride a bicycle or moped on and along a sidewalk or across a roadway on and along a crosswalk where the use of a bicycle or moped is prohibited by official traffic control devices.

(3) (a) Except as provided in subsections (1) and (2), a person operating a vehicle by human power on and along a sidewalk or across a roadway on and along a crosswalk has all the rights and duties applicable to a pedestrian under the same circumstances.

(b) A moped may be operated on and along a sidewalk or a bicycle path only under human propulsion and may not be operated on or along a sidewalk or bicycle path if the moped is under power from an independent power source.

(c) A moped may be operated under human propulsion or an independent power source on a highway, in a designated bicycle lane on a highway, or on the shoulder of a highway. (emphasis added)

A “moped” is defined pursuant to subsection 61-8-102(2)(n) MCA as meaning:

61-8-102(2)(n) "Moped" means a vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion, and an independent power source providing a maximum of 2 brake horsepower. The power source may not be capable of propelling the device, unassisted, at a speed exceeding 30 miles an hour on a level surface. The device must be equipped with a power drive system that functions directly or automatically only and does not require clutching or shifting by the operator after the drive system is engaged.

It is important to be aware that section 61-12-101 MCA entitled POWERS OF LOCAL AUTHORITIES TO REGULATE TRAFFIC”; pursuant to subsection 61-12-101(1)(n) MCA

states that a Montana local authority may with respect to sidewalks, streets, and highways under their jurisdiction and within the reasonable exercise of the police power enact ordinance provisions “that are not in conflict with state law”. (emphasis added)

Further, section 7-1-113 MCA of Montana’s local government self-government laws entitled “CONSISTENCY WITH STATE REGULATION REQUIRED” states in subsection 7-1-113(1) MCA that “(1) A local government with self-government powers is prohibited the exercise of any power in a manner inconsistent with state law or administrative regulation in any area affirmatively subjected by law to state regulation or control.” (emphasis added)

A couple of regulatory purposes or intents are evident pursuant to section 61-8-608 MCA. Bicycles may be ridden on public sidewalks unless official traffic control devices provide otherwise, and mopeds may only be operated on public sidewalks if operated pursuant to human propulsion. Courts basically expect a legal standard to be that a person must have reasonable notice that their conduct is prohibited in order for that person to be successfully cited for violating a law or ordinance.

Subsection 61-8-206(1) MCA entitled “LOCAL TRAFFIC CONTROL DEVICES” provides that local authorities shall place and maintain traffic control devices that they consider necessary to regulate, warn and guide traffic. Further, this Montana state law requires that “All traffic control devices must conform to the state manual and specifications”.

Subsection 61-8-201(2) MCA pertaining to obedience to traffic control devices provides that when traffic control devices are required for a traffic regulation, the traffic regulation “MAY NOT BE ENFORCED AGAINST AN ALLEGED VIOLATOR IF AT THE TIME AND PLACE OF THE ALLEGED VIOLATION AN OFFICIAL TRAFFIC CONTROL DEVICE OR FLAG PERSON IS NOT IN PROPER POSITION AND SUFFICIENTLY LEGIBLE OR VISIBLE TO BE SEEN BY AN ORDINARILY OBSERVANT PERSON.”(emphasis added)

An example of the importance of traffic regulation signage for practical enforcement of the traffic regulation, is section 10.20.250 Missoula Municipal Code that prohibits U-turn motor vehicle movements mid-block and at certain intersections. However, for decades municipal court judges have not supported enforcement of the U-turn regulation; primarily because there is no signage that places the motorist on notice that their conduct violates city ordinance. Persons cited would come to court and complain that they had no way of knowing that their U-turn movement was unlawful. The court would then dismiss the tickets. Therefore, city police basically ceased issuing u-turn citations for violation of section 10.20.250 MMC.

The Montana Supreme Court has indicated that statutes imposing penalties, either civil or criminal, must be clear and explicit, and if they are so vague and uncertain in their terms as to convey no meaning or if the means of carrying them out are not adequate or effective, the courts must declare them void. Missoula High School Legal Defense Association v. Superintendent of Public Instruction 196 M 106, 637 P2d 1188 (1981).

Pursuant to Montana’s Rules of Professional Conduct for Attorneys Rule 3.8 entitled “Special Responsibilities of a Prosecutor.” a prosecutor in a criminal case shall refrain from prosecuting a

charge that the prosecutor knows is not supported by probable cause as well as the prosecutor shall make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, see Rule 3.8 (a) and (d). Thus, with respect to riding a bicycle on a sidewalk the prosecutor has a professional responsibility to inform the defendant or the defendant's legal counsel that pursuant to section 61-8-608 MCA a person may ride a bicycle on a sidewalk unless specifically "prohibited by official traffic control devices."

With respect to motorized ebicycles and scooters section 61-8-375 MCA pertaining to motorized nonstandard vehicles might have some relevance. Section 61-8-375 MCA states as follows:

61-8-375. Unlawful operation of motorized nonstandard vehicles – exception. A person may not operate a motorized nonstandard vehicle on ways of this state open to the public unless the operation is specifically authorized by ordinance or regulation passed by the local governing body of the county, city, or town for a public way under its jurisdiction. (emphasis added)

Subsection 61-1-101(45) MCA defines a "motorized nonstandard vehicle" as follows:

61-1-101(45)(a) "Motorized nonstandard vehicle" means a vehicle, on or by which a person may be transported, that:

- (i) is propelled by its own power, using an internal combustion engine or an electric motor;
- (ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and
- (iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.

(b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a "pocket rocket".

(c) The term does not include a moped as defined in 61-8-102, an electric personal assistive mobility device, or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person. (emphasis added)

The Montana State law definition of the phrase "ways of this state open to the public" does not explicitly include sidewalks. The Montana State law definition of "ways of this state open to the public" means "any highway, road, alley, lane, parking area or other public or private place adapted and fitted for public travel that is in common use by the public." See subsection 61-8-101(1) MCA.

"Electric personal assistive mobility device" is defined in subsection 61-1-101(22) as follows:

61-1-101(22) "Electric personal assistive mobility device" means a device that has two nontandem wheels, is self-balancing, and is designed to transport

only one person with an electric propulsion system that limits the maximum speed of the device to 12 1/2 miles an hour.

There also is a definition of “electrically assisted bicycle” in subsection 61-8-102(2)(g) that states:

61-8-102. Uniformity of interpretation -- definitions. (1) Interpretation of this chapter in this state must be as consistent as possible with the interpretation of similar laws in other states.

(2) As used in this chapter, unless the context requires otherwise, the following definitions apply:

....

(g) "Electrically assisted bicycle" means a vehicle on which a person may ride that has two tandem wheels and an electric motor capable of propelling the vehicle and a rider who weighs 170 pounds no faster than 20 miles an hour on a paved, level surface.

CONCLUSION:

Generally pursuant to section 61-8-608 MCA it is recognized that a person may operate a bicycle or moped on a public sidewalk in Montana as long as there are no official traffic control devices prohibiting such usage at that specific location and as long as the moped is only being operated by human propulsion.

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/s/ Jim Nugent

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