

MAINE STATE LEGISLATURE

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Insurance

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Insurance

Legal Opinion--Motor Vehicle Racing (Go-Karts)

Facts: By the provisions of Section 60, Chapter 100 of the Revised Statutes of Maine 1954, as amended, the Insurance Commissioner has authority to adopt rules and regulations pertaining to motor vehicle racing. Pursuant to that statute the Commissioner did in fact adopt regulations which were subsequently approved in writing by the Governor and Council and a certified copy thereafter was filed with the Secretary of State as required by statute. These rules and regulations related to the structures used by the public as spectators during motor vehicle racing as well as to the various electrical standards, utility gates, auxiliary lighting, barriers and insurance requirements. Thereafter, after the advent of Go-Kart vehicles, additional rules and regulations were similarly adopted having much less strict standards due to the small size and usually less speed of a Go-Kart. The statute also requires the operator of a motor vehicle race to obtain a license.

A Go-Kart is described as a small motor vehicle about five feet in length built on a metal frame and having four wheels and tires, a small 2 or 4 cycle engine with a chain drive to the rear wheels and a seat and steering wheel for the operator. It holds no other persons and has no exterior structure such as, body, windows, etc. Originally, these vehicles were used on dirt tracks for racing purposes and "meets" were held throughout the state. However, the small profit to the operator would not warrant his complying with the various motor vehicle racing regulations and therefore tracks began to be used more for strictly pleasure riding rather than organized racing.

A track usually is a standard oval dirt track about 1/8 of a mile around. Spectators, if any, are usually other drivers who have either finished driving or who intend to drive. The owner of the track rents the vehicles to the individuals usually at a charge of \$1.00 for five laps around the track. The owner receives only the rental price and nothing else. The only restrictions are that the Go-Kart be used on the oval track and should not be removed from it. The vehicles must be driven to the right, or counter-clock wise direction, and there is usually a guide fence to keep the driver on the track together with guide barriers to keep him from cutting across the oval center which is not a driving area. No prize or other fees and restrictions are involved.

It should be pointed out also that these vehicles range in horsepower from 1 1/2 to 8 horsepower generally and are capable of speeds of approximately 25 to 35 miles per hour. Ones which have had some work done on them other than that provided by the factory are converted from the standard motor to a chain saw motor and these are capable of speed up to 90 and 100 miles per hour. An individual may come to the track and run alone, or several may come at one time and rent cars to be driven at the same time. These that come in groups are usually the most common and among themselves they would usually race on a somewhat unorganized basis. The questions propounded are as follows:

1. Is there motor vehicle racing, and must it be licensed as provided in Section 60 of Chapter 100 by either the owner of the track, the renter of the vehicles or the participants?
2. Must the track be licensed?

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3. Is the activity a "mechanical ride" within the provisions of Chapter 100, Section 69, Revised Statutes of Maine 1954, as amended?

A review of law of the state of Maine indicates that the questions have not been decided by a court of record. A review of law of about 1/3 of the other states indicates there is little or no regulation of racing except on public highways or other places where the public has a right or privilege of access other than privately owned property. Therefore, it appears that the question raised here is somewhat novel and will have to be answered primarily on a common sense basis.

A review of Section 60, Chapter 100 would indicate that the Commissioner's regulation shall be intended to "protect spectators during any type of motor vehicle racing". In the fourth paragraph of the same section the statute relates: "the fee for a license to operate any type of motor vehicle racing...". We are considering two different statutory requirements--one as to the tracks and the other as to racing.

This statute then applies: 1. during any type of motor vehicle racing and, 2. to anyone who is to operate any type of motor vehicle racing. That these vehicles are a form of motor vehicle, there can be no question. Therefore, if it is a fact that persons regularly go upon a track for the purpose of mutually engaging in a rather unorganized contest of speed the question to be answered is: "What is a race?" Also, to be answered is the question, "If this is a race, who is the 'operator' of such racing?"

The 1962 edition of Words and Phrases, Racetrack--volume 35 indicates as follows:

"A track used for quarter--midget vehicle racing, participated in by children, was a 'race track', within zoning ordinance prohibiting race tracks except those used exclusively for contests of speed, skill or endurance between human beings only." This is a quotation from City of Norwalk v. Auction City, Inc., VIII Calif-ornia Reporter, 781--784.

Websters new Collegiate Dictionary defines the word race track as "an oval course over which a race is run." It also defines the word race as "a contest of speed". From these three definitions therefore, I feel that the oval tracks in question are in fact race tracks and that from time to time undoubtedly persons going upon the tracks are engaged in racing.

The case of Jarrell v. Harwichburg Fair, 215 Ill. App. 273 defines a race (for other purposes) as follows:

"One who invites the public to attend a race between motor vehicles and charges an admission fee..." "An association which is giving an exhibition upon grounds in its possession to which it charges an admission, which has offered a prize for a speed and endurance contest between automobiles upon a track of its grounds cannot..." "escape liability (as a racing promoter) to a spectator" in that a driver acted

From these few decisions of law we are therefore logically entitled to believe that the owners of the property in question in the state of Maine undoubtedly own a race track but do not in fact "operate motor vehicle racing". Therefore, it must be concluded that the owners of such tracks can be compelled to comply with the provisions of Section 60 of Chapter 100, and obtain a license for a race track but they do not have to obtain a license to "operate motor vehicle racing".

I also feel that the statute was never intended to apply to participants of unorganized racing at which there are no spectators, and any persons present are those who are either about to participate among themselves or who have just completed participating. Therefore, the participants would not be required by Section 60 of Chapter 100 to obtain a license as an "operator of motor vehicle racing".

The provisions of Section 69-A, "definition of mechanical ride" is: "a power operated device by which a person is conveyed, where control by the rider over the speed or direction of travel is incomplete." It would appear that the operator of the track upon renting the Go-Kart to the rider loses completely the control over the speed or direction of travel of the vehicle and that control by the rider over the speed direction of travel is entirely complete.

Therefore, a Go-Kart cannot be a mechanical ride within the meaning of the statute and it is therefore unnecessary to consider the rules and regulations adopted pursuant thereto.

Respectfully submitted:

/s/ Albert E. Gay
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