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416
August 26, 1965

Stanton S. Weed, Director

Motor Vehicle

Jerome H. Natus, Assistant

Attorney General

Clarification of Chapter 303, P. L. 1965, §§ 1 & 2.

FACTS:

The Director of the Department of Motor Vehicles has submitted to this Office a series of questions presented to the Director by the Chief Driver License examiner of the Department of Motor Vehicle. The questions seek an interpretation of Chapter 303, P. L. 1965, §§ 1 and 2 which is an act titled "An Act Relating to Operation of Motorcycles While Learning to Drive." Questions 1 through 8 relate to section 1 of the reference law which reads as follows:

"Sec. 1. R. S., T. 29, § 532, amended. Section 532 of Title 29 of the Revised Statutes is amended by adding at the end a new paragraph, as follows: 'Any person holding a valid driver's license and who is at least 16 years of age shall be issued a temporary permit for a period of one year to operate a motorcycle until he passes his road test. The fee for the road test shall be \$2.'"

Question 9 relates to section 2 of the reference law which reads as follows:

"Sec. 2. R. S., T. 29, § 537, amended. Section 537 of Title 29 of the Revised Statutes is amended by adding at the end a new paragraph to read as follows: 'Any unlicensed person while learning to operate a motorcycle shall not carry any passenger on said motorcycle who is not licensed as a motorcycle operator.'"

QUESTION 1:

May the Department require an application for the issuance of the temporary permit?

ANSWER:

Yes.

OPINION:

The means by which the Department of Motor Vehicles establishes the qualification or non-qualification of a person requesting a temporary permit is an administrative decision and does not require a legal interpretation of the reference section. There is no legal reason why the Department cannot require an application for the issuance of a temporary permit.

QUESTION 2:

May the \$2.00 road test fee be collected at the time of the permit issuance?

ANSWER:

Yes.

OPINION:

The point in time when a road test fee is collected is an administrative decision and does not require a legal interpretation of the reference section. There is no legal reason why the road test fee cannot be collected at the time of the permit's issuance.

QUESTION 3:

If lost, is the \$0.50 duplicate fee applicable?

ANSWER:

Yes.

OPINION:

29 M.R.S.A. § 541 provides as follows:

***§ 541. Duplicate licenses**

In the event that an operator's license or registration card issued under this Title shall be lost or destroyed, the person to whom the same was issued may obtain a duplicate or substitute upon furnishing proof satisfactory to the Secretary of State that such license or card has been lost or destroyed and upon payment of a fee of 50¢.

"If the Secretary of State is satisfied that public safety will not be endangered, he may issue, upon payment of a fee of 50¢, a duplicate license to a person who has an original license."

Within the context of 29 M.R.S.A. § 541 a temporary permit would be considered an operator's license. A temporary permit allows a holder of such permit to operate a motor vehicle.

A motorcycle is a motor vehicle. See the definition of motorcycle, 29 M.R.S.A. § 1, subsection 4.

29 M.R.S.A. § 531 states in part:

"No resident of the State shall operate any motor vehicle on any way, unless licensed by the State to operate such motor vehicle. . . ."

A temporary permit allows the operation of a motor vehicle on any way. Hence, it must follow that a temporary permit would be considered a license for purposes of obtaining a duplicate license and the fee set forth in 29 M.R.S.A. § 541 would be properly charged for a lost temporary permit.

QUESTION 4:

If a road test is not completed by the expiration of the permit date, may another permit be issued?

ANSWER:

No.

OPINION:

The language of P. L. 1965, chapter 303, § 1 precludes an interpretation that a new temporary permit can be issued after the expiration of a year. This section refers to 'a temporary permit.' This section also refers to a definite period of time during which the road test may be based, i.e., "a period of one year." This one year period is cut short if a road test is passed. There is no provision in this reference section for an extension of the period for more than one year nor is there a provision for the granting of a new temporary permit at the end of one year if the road test is not passed. If the Legislature intended more than one temporary permit they could have easily provided for same by appropriate statutory language.

QUESTION 4-B:

B. If "No" and a road test fee has been collected, what is the disposition of the fee collected.

ANSWER:

See opinion.

OPINION:

If the road test is not taken by the temporary permit holder within a year period from the issuance of the temporary permit the \$2 fee collected for the road test must be returned to the former holder of the temporary permit.

QUESTION 5:

If the road test fee has been collected, and the applicant fails the road test, is another fee collected before re-examination and if so is the fee another \$2.00?

ANSWER:

See opinion.

OPINION:

If a person fails the road test, another \$2.00 fee must be charged for each and every other road test taken within the one year period of the temporary permit. This reference section contemplates the possibility of taking more than one road test by the use of the words "until he passes his road test."

QUESTION 6:

May a 15 year old operate a motorcycle, motor scooter or motor bike?

ANSWER:

No.

OPINION:

29 M.R.S.A. § 532 provides that a 15 year old person who has completed a driver education course may obtain an instruction permit. This instruction permit entitles the holder:

"while having such permit in his immediate possession, to drive a motor vehicle upon the public highways for a period of one year when accompanied by a licensed operator who has at least one year of driving experience and is at least 18 years of age and who is occupying a seat beside the driver, except in the event the permittee is operating a motorcycle, motor scooter or motor bike."

The Legislature must have intended to exclude the operation of motorcycles, motor scooters and motor bikes by persons holding an instruction permit. To interpret the clause "except in the event the permittee is operating a motorcycle, motor scooter or motor bike," to refer solely to the immediate preceding clause "who is occupying a seat beside the driver," would be to impute ridiculousness to the action of the Legislature. That body must be considered to use common knowledge in passing laws and the members are well aware that seats on motorcycles, motor scooters and motor bikes are in tandem and the operator could not have a licensed operator riding beside him.

The interpretation above is now further confirmed by the passage of F. L. 1965, c. 303, supra. Certainly, the Legislature had a purpose in passing that chapter. Section 1 of chapter 303 clearly indicates that a person 16 years of age holding a valid operator's license shall be entitled to a temporary permit to operate a motorcycle which includes motor scooters and motor bikes. This amendment to 29 M.R.S.A. § 532 when read in conjunction with section 544 provides an exclusive method for obtaining a license to operate a motor cycle.

QUESTION 6-A:

A. If "yes" does he submit to the regular examination to obtain a permit for the purpose of learning.

ANSWER:

The answer to Question 6 being "No" it is not necessary to answer this question.

QUESTION 7:

May a person who has been restricted, by the department, to certain vehicles, because of record or due to physical handicap, be issued a permit?

ANSWER:

No.

OPINION:

A valid drivers license for purposes of this reference section is a license that is not restricted to the operation of a special vehicle or vehicles because of a prior record of the operator or because of a physical handicap of the operator. Otherwise, the situation could arise where a person could have a restricted license for operation of certain vehicles and a non-restricted temporary permit to drive a motorcycle. Such a situation would be contrary to the best interest of highway safety, and common sense tells us that this would not be the intention of the Legislature in passing the reference section.

QUESTION 8:

May a person who is at least 16 years of age, holding a valid license, issued by a jurisdiction other than Maine, be issued a temporary permit?

ANSWER:

Yes.

OPINION:

A temporary permit may be issued to persons at least 16 years of age holding a valid drivers license of another jurisdiction. There is no restriction in the reference section on the issuance of these permits solely to holders of State of Maine valid drivers licenses.

QUESTION 9:

Does the law, as passed, prohibiting carrying of passengers on motorcycles, include motor scooters and motor bikes?

ANSWER:

See opinion.

OPINION:

P. L. 1965, c. 303, § 2 clearly restricts the carrying of passengers on motorcycles to those passengers who are licensed as motorcycle operators.

The terms "motor scooter" and "motor bike" may be substituted for the term of "motorcycle" in the statute because motor scooters and motor bikes fall within the definition of a motorcycle set forth in 29 M.R.S.A. § 1, subsection 4.

29 M.R.S.A. § 1 subsection 4 states:

"4. Motorcycle. Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than 3 wheels in contact with the ground, but excluding a tractor."

Thus, this section sets forth four criteria for a motorcycle.

1. It must be a motor vehicle.
2. It must have a seat or saddle for the use of the rider.
3. It must be designed to travel with not more than 3 wheels in contact with the ground.
4. It must not be a tractor.

Motor scooters and motor bikes are motor vehicles as they are self-propelled vehicles not operated exclusively on tracks. See definition of motor vehicle 29 M.R.S.A. § 1 subsection 7.

Motor scooters and motor bikes have seats or saddles for the use of a rider.

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Motor scooters and motor bikes are designed to travel on not more than 3 wheels in contact with the ground.

Motor scooters and motor bikes are not tractors. See definition of tractor 29 N.R.S.A. § 1 subsection 17.

It is clear that motor scooters and motor bikes are motorcycles within the definition set forth in 29 N.R.S.A. § 1 subsection 4.

Jerome S. Natus
Assistant Attorney General

JSM/all
cc: State Police