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DEPARTMENT OF THE ATTORNEY GENERAL
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January 19, 1977

Honorable Emile Jacques
Committee on Transportation

RE: Opinion concerning 29 M.R.S.A. §1373

Dear Representative Jacques:

This letter responds to your letter of January 13, 1977, asking whether the provisions of 29 M.R.S.A. §1373 apply to the operation of motorcycles on privately owned land as well as on public ways.

29 M.R.S.A. §1373 provides:

"Every person operating a motorcycle or motor driven cycle, or riding as a passenger on a motorcycle or motor driven cycle or in a sidecar attached to a motorcycle or motor driven cycle shall wear protective headgear conforming with such minimum standards of construction and performance as the Commissioner of Transportation may prescribe."

The subject statute, which requires every person operating or riding as a passenger on a motorcycle to wear protective headgear, contains no territorial limitations on the scope of its mandate. Section 1373, therefore, differs from many other regulatory provisions of Title 29 which apply to vehicular travel only on "ways" (defined by 29 M.R.S.A. §1(21)) or "highways." Presumably, if the Legislature wished to restrict the application of §1373 to public thoroughfares, it would have expressly confined the application of the statute to ways or highways.


Although it might be possible to deviate from the plain language of the statute if the policy underlying its enactment supported a different interpretation, this is not the case here. The ostensible objective of §1373 is the protection of both the operator and the passenger on a motorcycle from serious head injury. The likelihood

of such injury exists, of course, on private roads and on other private property where motorcycles can be operated just as it does on public ways. The Legislature evidently has intended to protect all persons riding upon motorcycles, regardless of the situs of operation, from such injury.

It is the opinion of this office, therefore, that the provisions of 29 M.R.S.A. §1373, which require motorcyclists to wear protective headgear, apply to the operation of motorcycles on private as well as on public land.

Regarding the constitutionality of §1373, the Maine Supreme Judicial Court has recently upheld the statute against a due process challenge. In State v. Quinnam, Decision No. 1426 (Me. Opinion filed on January 17, 1977), the court held that the requirement that motorcyclists wear protective headgear has a rational relationship to the Legislature's police power interest in promoting the public safety. As a basis for its conclusion, the court noted that a helmetless motorcyclist is "highly vulnerable to objects kicked up from roadways or falling from trees," and that "only a slight blow to the exposed head of the operator of a motorcycle. . . can cause the operator to lose control of the vehicle's operation." These same considerations would also apply on private land or private roadways which experience vehicular travel. Moreover, not only does the state have an interest in protecting its citizens using private roadways from danger caused by failure of motorcyclists to wear helmets, it also has an interest in shielding the public in general from the financial and medical burden which would attend serious injury to a motorcyclist occurring on private land. State ex rel. Colvin v. Lombardi, 104 R.I. 28, 241 A.2d 625 (1968) (cited in State v. Quinnam, supra). Consequently, the application of 29 M.R.S.A. §1373 to the operation of motorcycles on private land would comport with the constitutional requirement of due process.

Sincerely,


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