

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

July 18, 1980

Honorable Judy Kany
18 West Street
Waterville, Maine 04901

Re: Interpretation of 29 M.R.S.A. § 1376.

Dear Representative Kany:

By letter dated June 23, 1980, you have requested an opinion from this Office regarding three questions concerning the interpretation of 29 M.R.S.A. § 1376, enacted by P.L. 1979, c. 593 and effective July 3, 1980. Section 1376 provides:

§ 1376. Protective headgear for motor-cycle riders and motor driven cycle riders who are minors.

Every person under the age of 15 years who rides as a passenger on a motorcycle or motor driven cycle or in a sidecar attached to a motorcycle or motor driven cycle or who operates an off-road motorcycle or motor driven cycle shall wear protective headgear conforming with those minimum standards of construction and performance which the Secretary of State may prescribe.

No operator of a motorcycle or motor driven cycle nor parent nor guardian may allow a passenger under the age of 15 years to ride in violation of this section.

No operator of an off-road motorcycle or motor driven cycle under the age of 15 years may ride in violation of this section.

Violation of this section is a civil violation for which a forfeiture of \$25 for the first violation and \$50 for each subsequent violation shall be adjudged.

Your questions are as follows:

1. Whether the statute imposes civil liability on a parent or guardian when their child under 15 years of age is a passenger without protective headgear on a motorcycle, regardless of whether the parent or guardian acts as the operator of the motorcycle?

2. What is the meaning of the term "allow" as used in the second sentence of section 1376?

3. Whether there exists any constitutional infirmity in the statute by its imposition of liability on parents or guardians?

The paragraphs below correspond to the questions as they are numbered above:

1. Section 1376 requires every person less than fifteen years of age who rides as a passenger on a motorcycle or motor driven cycle or operates an off-road motorcycle to wear protective headgear. Section 1376 further provides that "[n]o operator of a motorcycle or motor driven cycle nor parent nor guardian may allow a passenger under the age of fifteen to ride in violation of this section." Although its language is somewhat awkward, this sentence, by its terms, makes both the operator and the parent liable where either allows a person under fifteen to ride as a passenger without protective headgear. Your question is, in essence, whether the parent or guardian must be the operator before he or she can be held civilly liable.

It is our opinion that section 1376 imposes civil liability on parents or guardians regardless of whether they act as the operator of the motorcycle. We have considered and rejected

a construction of 29 M.R.S.A. § 1376 which would impose liability on the parent or guardian only where he or she is the operator of the motorcycle. Such a construction would be contrary to the rule of statutory interpretation which requires that, when construing a statute, nothing should be treated as surplusage if a reasonable interpretation supplying meaning and force to the language in question is possible. State v. Tullo, Me., 366 A.2d 843, 848 (1976); Finks v. Maine State Highway Commission, Me., 328 A.2d 791, 799 (1974). To interpret section 1376 to impose civil liability on parents or guardians only when they, as operators, allow their children to ride as passengers without protective headgear would violate the surplusage rule. Specifically, the Legislature, if it desired to achieve such a result, would not have placed the phrase "nor parent nor guardian" in the second sentence since a parent would already be liable as an operator, regardless of parental status.

Our interpretation of 29 M.R.S.A. § 1376 finds substantial corroboration in the attendant legislative history. The original bill, L.D. 1700, did not contain the present second sentence. As a result of Senate Amendment B, No. S-410, however, the language in question was added. The "Statement of Fact" to Senate Amendment B stated:

"[t]he purpose of this amendment is to extend responsibility for enforcing the statute to include the parents or guardians of passengers under the age of fifteen and also to provide that an operator of an off road motorcycle or motor driven cycle wear protective headgear.

This statement of purpose indicates that it was the Legislature's intent to impose liability on parents for failure to exercise parental or guardian responsibility.

In summary, the language of the statute, the legislative history and judicial rules of statutory interpretation convince us that 29 M.R.S.A. § 1376 imposes civil liability on parents or guardians where they allow a child under age 15 to ride as a passenger on a motorcycle, regardless of whether they operate the motorcycle.

2. In determining the meaning of undefined terms in a statute, it is appropriate to construe the language in accordance with its ordinary meaning. State v. Flemming, Me., 377 A.2d 448, 451 (1977). The term "allow" is defined in Webster's Third New International Dictionary to mean "to permit by way of concession, to permit by neglecting to restrain or prevent." Because the term "allow" is ambiguous and subject to different interpretations we are unable to predict with certainty precisely how courts will interpret it.

Although the legislative intent expressed in the "Statement of Fact" to Senate Amendment "B", No. S-410, quoted above, could be read to contemplate strict liability on the part of parents or guardians, we believe that courts will be more likely to interpret the term as requiring a showing of awareness on the part of the parent or guardian. Thus, in order for liability to attach under 29 M.R.S.A. § 1376, it will probably be necessary to demonstrate that the parent or guardian was aware that the child was riding as a passenger on a motorcycle without wearing protective headgear, or, alternatively, that the parent or guardian was aware of circumstances which were such that a reasonably responsible parent should have known that the law was being violated. See City of East Lake v. Ruggiero, 7 Ohio App.2d 212, 217, 220 N.E.2d 126, 129 (1966) (parental responsibility for allowing a child to violate a curfew ordinance).

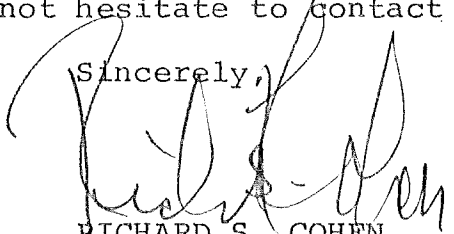
3. In determining the constitutionality of an act of the Legislature, we start with the premise that all acts are presumed to be constitutional. State v. S. S. Kresge, Inc., Me., 364 A.2d 868, 872 (1976). It is our opinion that if challenged, 29 M.R.S.A. § 1376 would most likely be held to be constitutional.

Although we have found no cases dealing with the precise question presented here, many states, including Maine, have parental responsibility statutes holding the parent liable for the "willful or malicious causing of damage to property or injury to a person." 19 M.R.S.A. § 217. These statutes have been subjected to judicial scrutiny and have almost uniformly been held to be constitutional as a reasonable exercise of legislative "police powers" rationally related to serving the interests of public health and safety. See, e.g., Watson v. Gradzik, 34 Conn. Sup. 7, 373 A.2d 191 (1977); Mahaney v. Hunter Enterprises, Inc., 426 P.2d 442 (Wyo. 1967). In one case, however, Corley v. Lewless, 227 Ga. 745, 182 S.E.2d 766 (1971), a parental responsibility

statute was held unconstitutional as a deprivation of property without due process of law where it imposed vicarious tort liability solely on the basis of a parent-child relationship and set no dollar limit on the amount of liability. 29 M.R.S.A. § 1376 is distinguishable from the unconstitutional Georgia statute. Section 1376 both imposes liability on parental conduct, namely, the failure to act by "allowing" a child under 15 to ride as a passenger on a motorcycle without protective headgear, and sets specific monetary limits on parental liability.

I hope this answers your questions. If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard S. Cohen', written over the word 'Sincerely,'.

RICHARD S. COHEN
Attorney General

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