

Committees:
Ways & Means, Chairman
Public Education



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MAR 13 2001

OPINION COMMITTEE

March 5, 2001

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MAR 13 2001

OPEN RECORDS DIVISION

RQ-0364-JC

The Honorable John Cornyn
Attorney General of Texas
P.O. Box 12548
Austin, TX 78711-2548

Dear General Cornyn:

I am writing to respectfully request an Attorney General's opinion to clarify the following:

There is a question as to whether the Department of Public Safety (DPS) currently has jurisdiction over the delivery of a training course for riders, from ages six and up, of off-road dirt bikes under existing statutes and regulations.

It is my opinion that no underlying statute exists, as there is for the on-road Motorcycle Operator Training and Safety programs under Chapter 662. Accordingly, the governor has not designated and has no reason to designate any state agency to administer a dirt bike training program. [Section 662.001]

Under Section 662.009, the designated agency may adopt rules to administer this chapter. The DPS has promulgated a comprehensive rule in Section 31, Standards for an Approved Motorcycle Operator Training Course. Implicit in this rule is that the program administered pertains to the operation of on-road motorcycles, and not to dirt bikes.

PROGRAM COMPARISONS

Chapter 662 and Section 31	Dirt Bike School
Course is designed to teach riding skills and defensive street riding strategies.	Course is designed to teach basic techniques for riding off-highway motorcycles.
Training site is flat paved surface. Site requires classroom and storage building.	Site is dirt and hilly. No building facilities are required.
Student is required to be age 15 or older and be capable of being licensed in Texas as a motorcycle operator.	Students age six and over may enroll. There is no relationship to being licensed in Texas.

PROGRAM COMPARISONS CONTINUED

<u>Chapter 662 and Section 31</u>	<u>Dirt Bike School</u>
Course completion indicates the student has met the requirements for a motorcycle license .	Course completion certificate indicates only that ; it has nothing to do with licensing.
The motorcycle must meet requirements for operation on public highways. Engine must not exceed 350cc for basic course.	The motorcycle, which is a dirt bike, can not meet the requirements for highway operation.

Although Section 662.006 states that a person may not offer training in "motorcycle" operation unless the person is licensed by, or contracts with the designated state agency, a motorcycle as defined in the Transportation Code is required to be equipped with certain devices that are implicit for operation on public roadways - (Lighting and reflectors Section 547.801; horn Section 547.501; and mirrors Section 547.602) Off-road motorcycles (dirt bikes) are not equipped and are not defined in the code.

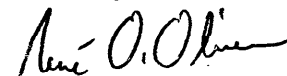
It should also be noted that the Motorcycle Education Fund Account Section 662.022, is funded by fees that are collected under Sections 521.421, 522.029 and 661.003 having to do with motorcycle licenses and licensing for operating a motorcycle on roads and highways.

Question:

Will the offering of courses of instruction in the operation of off-road motorcycles (dirt bikes) conducted at various times and places across the state, be subject solely to the licensor, permitting or other requirements of the controlling local jurisdiction, or can the state, under existing statutory authority, assert some additional level of control over such activity through a regulatory agency?

Thank you for your consideration of this request.

Sincerely,



Rene O. Oliveira
Chairman, House Ways and Means Committee