

Opinion No. 64-148

December 16, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Frank Bachicha, Jr., Assistant Attorney General

TO: Benny E. Sanchez, Commissioner, Department of Motor Vehicles, Santa Fe, New Mexico

QUESTION

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Is registration of "Go-Carts" required under the New Mexico law regulating the operation of motor vehicles?

CONCLUSION

See Analysis.

OPINION

ANALYSIS

Certain vehicles are subject to registration pursuant to the provisions of the Motor Vehicle Code. Section 64-3-2, N.M.S.A., 1953 Compilation sets forth the following pertinent requirements:

"64-3-2. Vehicles subject to registration -- Exceptions. -- Every motor vehicle trailer, semi-trailer and pole trailer when driven or moved upon a highway shall be subject to the registration and certificate of title provisions of this act except: . . ."

We need not look beyond the Motor Vehicle Act itself to obtain a definition of the terms "vehicle" or "motor vehicle." Section 64-1-6, N.M.S.A., 1953 Compilation provides in pertinent part as follows:

"64-1-6. Definitions of vehicles. -- As used in the motor vehicle code:

A. "Vehicle" means every device in, upon or by which any person or property is or may be transported **or drawn upon a highway, excepting devices moved by human power** or used exclusively upon stationary rails or tracks;

B. "Motor Vehicle" means every vehicle which is selfpropelled and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails;

C. "Motorcycle" means every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground but excluding a tractor; . . ." (Emphasis Supplied)

It is unnecessary to describe the construction of the "Go-Cart" since commercial advertising photographs, of the type attached to your opinion request, are available. Suffice it to say there are various models available, all of which presumably run on four wheels and can be operated either with or without an engine. Those which are not self-propelled are advertised for use as a "push mobile." This would indicate that these are "devices moved by human power" expressly excepted from the definition of "vehicle" above and, therefore, not subject to registration pursuant to Section 64-3-2, supra.

A more serious problem exists, however, with regard to the "Go-Cart" upon which engines are installed, thereby converting them to self-propelled "motor vehicles." Certainly, and in any event, in order for registration to be required under our motor vehicle code these vehicles must be "driven or moved upon a highway." See Section 64-3-2, quoted, supra.

You have stated in your letter requesting this opinion that: "One or two of our Motor Vehicle Field Offices have issued motorcycle registration plates for this type of a vehicle." We believe that this is technically erroneous simply because the "Go-Cart" does not fall within the definition of a "motorcycle" in Section 64-1-6, supra. The only classification which appears to be applicable to the subject apparatus is that of "motor vehicle," and, therefore, the utilization of Section 64-11-1.1, N.M.S.A., 1953 Compilation, entitled "Passenger Vehicles -- Registration fees," to determine the correct registration fee would probably be appropriate, provided that registration is held to be mandatory for this type of device.

The deceptive similarity of the self-propelled "Go-Cart" to a toy is not sufficient to convince us that such a device does not fall squarely within the definition of "motor vehicle" noted, supra, which renders it subject to registration, if it is to be operated upon a highway. This, then is our conclusion. The self-propelled "Go-Cart" is a motor vehicle within the intendment of Section 64-1-6, supra, and is, therefore, subject to registration pursuant to Section 64-3-2, supra, if it is "driven or moved upon a highway."

A close observation of the above mentioned photograph of the subject "Go-Cart" compels us to bring to your attention the following pertinent portion of Section 64-3-6, N.M.S.A., 1953 Compilation:

"64-3-6. Grounds for refusing registration or certificate of title. -- The division may refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

. . .

(b) That the vehicle is mechanically unfit or unsafe to be operated or moved upon the highways; . . ."

The decision that valid grounds exist for refusal to grant registration or issuance of a certificate of title is one which must necessarily be made by the authorized officials of the Division of Motor Vehicles. We, therefore, voice no opinion regarding that question in this instance.