

## Opinion No. 69-14

February 25, 1969

**BY:** OPINION OF JAMES A. MALONEY, Attorney General Larry N. Smith, Assistant Attorney General

**TO:** Mr. William Henry Mee, Attorney, New Mexico Legislative Council, 334 State Capitol, Santa Fe, New Mexico 87501

### QUESTIONS

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Would an act requiring both the operators and passengers on motorcycles to wear safety helmets as a condition of their operation, and making it a misdemeanor for failure to do so, be constitutionally valid?

#### CONCLUSION

See analysis:

### OPINION

#### {\*20} ANALYSIS

That the legislature may exercise its power to protect and promote the safety, health, morals, and general welfare of the public is so well established that it is unnecessary to cite decisions so holding.

Given the above, the key question becomes: Is the protection of the safety of operators of motorcycles promotion of the safety and general welfare of the public?

One recent Michigan Court of Appeals case, **American Motorcycle Association v. Davids**, 158 N.W. 2d 72 (1968) held that a statute similar to the one proposed in New Mexico was unconstitutional because requiring motorcycle operators to wear helmets did not relate to the general welfare, but only to the welfare of those who chose to ride motorcycles; thus the freedom of the individual was unconstitutionally restricted.

Two other cases *State v. Lombardi*, 241 A.2d 625 (1968), a case in the Supreme Court of Rhode Island, and **Commonwealth v. Howie**, 238 N.E.2d 373, a Supreme Judicial Court of Massachusetts case, held statutes requiring helmets constitutional. The basic theory of the Rhode Island case was that people injured on motorcycles may become public wards and thus burden the state, or that a motorcyclist may be hit by debris thrown out from automobiles and go out of control and endanger the lives of others. The reasoning in the Rhode Island case does not seem particularly sound.

The Massachusetts Court decided its case in a more summary fashion. It simply said:

"The act of the Legislature bears a real and substantial relation to the public health and general welfare and is thus a valid exercise of the police power."

However, the Massachusetts Court did say it was in agreement with the Rhode Island case.

New Mexico Attorney General Opinion No. 66-15 seems to conform to the analysis of the Michigan Court, although the question in that Attorney General opinion involved the ordinance {<sup>21</sup>} power of a city rather than the police power of the state.

It should be noted that the Supreme Court of the United States denied certiorari in the Massachusetts case. See, **Howe v. Massachusetts**, 89 S. Ct. 485 (1968). Although it is dangerous to draw inferences from a mere denial of certiorari, it could be inferred that the Supreme Court did not find the decision in error.

In light of the above, we would be less than candid if we did not admit that doubts have been cast on our Opinion No. 66-15; however, in light of **American Motorcycle Association v. Davids**, supra, we are unwilling to completely abandon our past position.

Note should be taken of the last paragraph of Opinion No. 66-15. Requiring minors to wear helmets would perhaps be a valid exercise of the power of **parens patriae** and would enable the state to protect youths whose judgment might not yet allow them to exercise their individual freedom judiciously with regard to their own safety.