

## Opinion No. 71-108

September 17, 1971

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** E.E. Chavez Chief Counsel, Legal Division State Highway Department 1120  
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### QUESTIONS

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May snowmobiles use a highway right of way between the edge of the roadway and the adjacent fence line or right of way boundary when the highway is open as usual to vehicular traffic?

#### CONCLUSION

Generally not; see analysis.

### OPINION

#### {\*162} ANALYSIS

The answer to your question is dependent solely upon the proper interpretation of Section 8, Chapter 177, Laws 1971 which provides as follows:

"A. No person shall operate a snowmobile on any limited access highway or freeway **at any time.**

B. [Not applicable in answering your question.]

{\*163} C. No person shall operate a snowmobile unless:

(1) a lighted head lamp and a red or amber taillight . . . is displayed while operating the snowmobile **on or along any roadway** during the hours of darkness; **and**

(2) where conditions permit, the snowmobile is operated on the righthand side of any roadway, parallel, **but not closer than ten feet, to the inside of the plow bank.**

D. Snowmobiles may be operated on public roads, streets or highways **only when;**

(1) the public roads, streets or highways are **closed** to automotive traffic **or** are not regularly plowed or maintained;

(2) the operation is authorized during periods of emergency by the county sheriff, the state police, the governor or the office of civil and defense mobilization, provided travel by conventional vehicles is not permitted or adequate precautions to protect such traffic are taken; **or**

(3) special events of limited duration are conducted according to a prearranged schedule approved by the governing body having jurisdiction over the streets or roads and traffic control assistance is provided." (Emphasis added)

Laws 1971, Chapter 177, Section 8 was enacted as a safety measure. There have been accidents in the recent past between automobiles and snowmobiles when the latter were being operated on highway rights of way. There have also been accidents because snowplow operators were unable to see snowmobiles operating in the highway right of way. Keeping this background in mind we will proceed to analyze Laws 1971, Chapter 177, Section 8 in light of your question.

First, Paragraph A provides, "No person shall operate a snowmobile on any limited access highway or freeway **at any time.** " This prohibition contains no exceptions.

Paragraph C is the provision that causes the difficulty due to the language therein that permits snowmobiles use on certain highway right of way "where conditions permit."

Reading all the provisions of Section 8, Chapter 177, Laws 1971 together, the conclusion becomes inescapable that Paragraph D sets forth the only situations "where conditions permit" the use of snowmobiles on highway right of way. If that was not the case, the language in that Paragraph -- "Snowmobiles may be operated on public roads, streets or highways **only when.** . ." would be rendered meaningless. We cannot attribute such an intention to the legislature.

By: Oliver E. Payne

Deputy Attorney General