

OPINION NO. 72-008

Syllabus:

A bicycle which contains a two-stroke engine to aid in powering it is considered a motor vehicle and a motorcycle within the provisions of Sections 4501.01 and 4511.01, Revised Code.

To: Eugene P. O'Grady, Director, Dept. of Highway Safety, Columbus, Ohio
By: William J. Brown, Attorney General, January 27, 1972

I have before me your request for my opinion, which reads, in part, as follows:

"The Department of Highway Safety hereby requests your legal opinion as to whether or not a vehicle which is principally a bicycle, but

which also contains a two-stroke engine to help power it is considered a motor vehicle within the statutes which the Department of Highway Safety, the Bureau of Motor Vehicles, and the Ohio State Highway Patrol administer."

Although the vehicle you describe has limited speed and a small quiet motor, it is clear that when the motor is engaged it generates sufficient power to propel the vehicle at normal pedaling speed without use of muscular power. The Ohio Revised Code is very specific in defining what constitutes a motor vehicle. Section 4501.01 (B), Revised Code, states, in part, as follows:

"* * * [R]oad rollers, traction engines, power shovels, power cranes, and other equipment used in construction work and not designed for or employed in general highway transportation, well drilling machinery, ditch digging machinery, farm machinery, trailers used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a public road or highway at a speed of twenty-five miles per hour, or less, threshing machinery, hay baling machinery, corn sheller, hammermill and agricultural tractors and machinery used in the production of horticultural, agricultural, and vegetable products."

It is clear that the twenty-five mile per hour limit exception applies only to certain farm equipment used to transport produce, and not to all vehicles. Furthermore, the vehicle in question may be propelled "by power other than muscular power". For these reasons, I must disagree with the ruling in Columbus v. Smith, Case No. 81411, Franklin County Municipal Court, Criminal Division, decided October 19, 1971, which held such a vehicle not to be a motor vehicle within the purview of the Ohio Revised Code.

Unlike several other states, Ohio makes no exceptions as to motor vehicles with limited horsepower or those used solely for therapeutic purposes. Many states have adopted statutes similar to Section 257.32 of the Michigan Compiled Laws, amended June 1, 1970, which provides as follows:

"'Motor driven cycle' means every motor-cycle, with a motor that produces less than 5 gross brake horsepower, every motor scooter and every bicycle with motor attached, except a motorized wheelchair or other similar vehicle not exceeding 1,000 pounds gross weight operated by a physically afflicted or disabled person and except pedal bicycles with helper motors that produce less than 1 brake horsepower when used by a physically handicapped or recuperating person." (Emphasis added)

Such a statute clearly excludes some types of the vehicles

you describe from the definition of a motor driven cycle. In contrast, the Ohio legislature has not seen fit to exclude bicycles with motors of limited speed and horsepower from the provisions of the Code regulating motor vehicles. Section 4511.01 (C), Revised Code, amended September 14, 1962, specifically states:

"(C) 'Motorcycle' means every motor vehicle other than a tractor having a saddle for the use of the operator and designed to travel on not more than three wheels in contact with the ground, including, but not limited to, motor vehicles known as 'motor-driven cycle', 'motor bicycles', 'motor scooter', 'bicycle with motor attached', or 'motorcycle' without regard to weight or brake horsepower." (Emphasis added)

In specific answer to your question it is my opinion, and you are so advised, that a bicycle which contains a two-stroke engine to aid in powering it is considered a motor vehicle and a motorcycle within the provisions of Sections 4501.01 and 4511.01, Revised Code.