

**LETTER OPINION
2003-L-59**

December 8, 2003

Mr. Robert E. Manly
New Rockford City Attorney
601 Central Avenue
New Rockford, ND 58356-1640

Dear Mr. Manly:

Thank you for your letter requesting my opinion on whether a city, including a home rule city, has the authority to pass an ordinance regulating the licensing of mopeds or motorized scooters. You indicate that dealers in New Rockford have been selling these vehicles, but they are unable to obtain certificates of origin from the manufacturers which prevents licensure and registration by the state.¹

The terms “moped” and “motorized scooters” are not specifically defined in the law; however, a moped does meet the definition of a “motorized bicycle”² contained in state law and is subject to motor vehicle and title registration under N.D.C.C. § 39-28-01 and N.D.C.C. ch. 39-04, see N.D.A.G. Letter to Strinden (July 7, 1983); and a motorized scooter does fit the definition of a “vehicle” in state law.³ N.D.A.G. 2001-F-07.

¹ You included a memo from the Highway Patrol indicating motorized scooters could be registered and licensed as “motorized bicycles” but that liability insurance would be required and operators must be at least fourteen and have a license or permit. See Memo from Major Mark Nelson to NDHP District Commanders (Sept. 26, 2003); N.D.C.C. § 39-04-02(3).

² A “motorized bicycle” is a “vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion or footrests for use by the operator, a power source providing up to a maximum of two brake horsepower . . . which will propel the vehicle, unassisted, at a speed not to exceed thirty miles . . . per hour on a level road surface, and a power drive system that functions directly or automatically only . . .” N.D.C.C. § 39-01-01(40). Thus, a motorized bicycle is a “vehicle” and a “motor vehicle.” See notes 3 and 4 below.

³ A vehicle is defined as including “every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by

Section 39-04-11, N.D.C.C., provides that generally:

[A] person may not operate or drive a vehicle on the public highways of this state unless the vehicle has a distinctive number assigned to it by the department, and two number plates, bearing the distinctive number conspicuously displayed, horizontally and in an upright position, one on the front and one on the rear of the vehicle, each securely fastened, except number plates assigned to a motorcycle, trailer, or housetrailer must be attached to the rear thereof. . . . All vehicle license plates issued by the department continue to be the property of the state of North Dakota for the period for which the plates are valid. An annual registration tab or sticker for the current registration year must be displayed on each number plate, in the area designated by the department for the tab or sticker, in those years for which tabs or stickers are issued in lieu of number plates.

Similarly, N.D.C.C. § 39-04-18(1) provides, in part, that “[a]ny vehicle being operated on highways, roads, or streets of this state must display license plates as furnished by the department upon payment of the fees prescribed in this chapter.”

The authority of cities to register or license motor vehicles is limited.⁴ As one noted author stated:

Motor vehicles using the highways and streets are subject to state or authorized municipal licensing and registration, and power to license vehicles of various kinds frequently is conferred, expressly or impliedly, by charter or legislative act, on municipal corporations, to be exercised either as a police regulation or for revenue. . . . But the authority of a municipal corporation to impose a tax on, or to exact a license fee from the owners of vehicles used within the corporate limits must distinctly appear and will be strictly construed. . . . Consistent with this view, an automobile license tax cannot be imposed merely on the basis of general police powers conferred on a municipality.

human power or used exclusively upon stationary rails or tracks.” N.D.C.C. § 39-01-01(89).

⁴ “Motor vehicle” is defined in N.D.C.C. § 39-01-01(38) as including “every vehicle that is self-propelled . . . and, for purposes of motor vehicle registration, title registration, and operator’s licenses, motorized bicycles.”

9A Eugene McQuillin, The Law of Municipal Corporations § 26.158 (3d ed. 1996). This author further noted:

As a general rule such a state motor vehicle code or law supersedes or prevails over all inconsistent municipal regulations. Accordingly, a municipal regulation conflicting with the state motor vehicle law is void and of no effect. This may be as true with respect to ordinances of home-rule cities as it is with respect to those of other municipal corporations. Indeed, a state motor vehicle law may exclusively regulate motor vehicles, precluding all municipal regulation.

7A Eugene McQuillin, The Law of Municipal Corporations § 24.620 (3d ed. 1998).

Furthermore, matters of statewide concern are subject to local regulation only when the regulation does not conflict with the statutes of the state or if otherwise authorized by law. See 6 Eugene McQuillin, The Law of Municipal Corporations § 21.34 (3d ed. 1998); N.D.A.G. 2000-F-18 (home rule political subdivisions may exercise a power if it, inter alia, concerns only local, rather than statewide, matters). Therefore, it is my opinion that a city without home rule authority may not regulate the licensing of mopeds or motorized scooters.

Nevertheless, home rule cities in this state may avail themselves of very broad powers in matters of local concern:

[T]he charter . . . is the organic law of the city, and extends to all its local and city matters. The charter and the ordinances made pursuant to the charter in such matters supersede within the territorial limits and other jurisdiction of the city any law of the state in conflict with the charter and ordinances and must be liberally construed for such purposes.

N.D.C.C. § 40-05.1-05 (emphasis supplied).

Section 40-05.1-06, N.D.C.C., provides that these charter powers may include the following:

3. To fix the fees, number, terms, conditions, duration, and manner of issuing and revoking licenses in the exercise of its governmental police powers.

. . . .

7. . . . to provide for public health, safety, morals, and welfare, and penalties for a violation thereof.
8. To lay out or vacate streets, alleys, and public grounds, and to provide for the use, operation, and regulation thereof.
9. To define offenses against private persons and property and the public health, safety, morals, and welfare, and provide penalties for violations thereof.
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16. To impose registration fees on motor vehicles . . . in addition to any other taxes imposed by law.

Home rule cities may supersede state law in those areas listed in N.D.C.C. § 40-05.1-06 as long as any of those powers is delineated in the city's home rule charter and implemented through ordinances. N.D.A.G. 2001-F-07. In N.D.A.G. 2001-F-07, I concluded that the home rule powers contained in N.D.C.C. § 40-05.1-06(7), (8), and (9) are sufficiently broad to permit the use of motorized scooters on city sidewalks in home rule cities notwithstanding a state statute to the contrary. *Id.* In addition to those powers mentioned in N.D.A.G. 2001-F-07, as pointed out above, a home rule city may also have authority to issue and revoke licenses and impose registration fees on motor vehicles. See N.D.C.C. § 40-05.1-06(3) and (16).⁵

Applying a liberal construction of a home rule city's charter as required under N.D.C.C. § 40-05.1-05, it is my opinion that the broad powers under N.D.C.C. § 40-05.1-06(3), (7), (8), (9), and (16) would permit a home rule city to license and register mopeds and motorized scooters, but only for use on its streets. Consequently, if a home rule city has these powers contained in its charter and they are properly implemented through ordinances, the city could license, register, and permit the use of mopeds and motorized scooters on its streets.

In reviewing the home rule charter for the city of New Rockford (as filed with the Secretary of State), I note that the charter does not contain the provision permitting the city to impose registration fees on motor vehicles. Consequently, the city would lack the authority to enact an ordinance imposing registration fees on mopeds and motorized

⁵ Section 39-04-39.3, N.D.C.C., also permits home rule cities to enter into contractual agreements with the Department of Transportation to collect motor vehicle registration fees assessed by the home rule city.

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scooters. See N.D.A.G. Letter to Fiedler (Mar. 7, 1984) (home rule city only has power to impose registration fee on motor vehicle when included in charter and implemented through ordinances).

Sincerely,

Wayne Stenehjem
Attorney General

jjf/pg