

**N.D.A.G. Letter to Hoffner (Aug. 30, 1985)**

August 30, 1985

Honorable Serenus Hoffner  
House of Representatives  
District 32  
1424 Atlanta Drive  
Bismarck, ND 58501

Dear Representative Hoffner:

Thank you for your letter of July 19, 1985, regarding questions that you have concerning the organizational motorcycle safety guidelines which were developed by the North Dakota Department of Public Instruction.

N.D.C.C. § 39-28-02 provides as follows:

39-28-02. SUPERINTENDENT OF PUBLIC INSTRUCTION TO ESTABLISH STANDARDS FOR MOTORCYCLE SAFETY COURSES. The superintendent of public instruction shall establish requirements for instructional standards, course approval, and teacher certification standards for motorcycle safety courses required by this chapter. Motorcycle safety courses may be offered by public schools and by approved organizations which meet instruction, course, and teacher certification requirements. The superintendent may adopt rules governing the operation of motorcycle safety courses, administer moneys pursuant to this chapter, conduct audits and otherwise examine the records and accounts of approved motorcycle safety courses, and require other information as may be necessary to monitor the quality of motorcycle safety courses.

As part of the teacher's certification standards, the Superintendent of Public Instruction has determined that the instructors in the motorcycle safety program must be at least 21 years of age. The first question you have in your letter is whether this age requirement contained in the guidelines is valid and enforceable or whether it constitutes wrongful discrimination.

Please understand that as Attorney General, I cannot give you my opinion as to the constitutionality of this requirement. Only a court of law could make that determination. Secondly, as part of my statutory duty, I am required to defend and uphold the constitutionality of all statutes and rules of the state of North Dakota. However, as a general rule, age classification will usually be upheld by a court if the classification is not patently arbitrary and bears a reasonable relationship to a legitimate government interest.

The second question you pose in your letter relates to ABATE of North Dakota who has hired a person who is 18 years of age to be an instructor within its motorcycle safety program. As you point out in your letter, this would be a violation of the rules established by the Superintendent of Public Instruction. Your question is whether ABATE must enforce this provision even if it is satisfied with the performance of the individual in question.

As is stated in N.D.C.C. § 39-28-02, "[m]otorcycle safety courses may be offered by public schools and by approved organizations which meet instruction, course, and teacher certification requirements." (Emphasis supplied). As part of these requirements, instructors must be at least 21 years of age.

It is my opinion that if ABATE wishes to continue offering public safety courses, it must comply with the regulations that its instructors be at least 21 years of age. The fact that ABATE now employs an 18 year old instructor who is competent is irrelevant and does not circumvent the requirement established by the Superintendent of Public Instruction.

Your third question is whether the guidelines established by the Superintendent of Public Instruction are enforceable in any case if they are not administrative rules. The Superintendent of Public Instruction is not considered an administrative agency under N.D.C.C. § 28-32-01. Therefore, he is not required to comply with the Administrative Practices Act [N.D.C.C. Ch. 28-32] including those provisions requiring the publication of administrative needs in the North Dakota Administrative Code. Therefore, while the rules established by the Superintendent of Public Instruction regarding motorcycle safety courses may not be "administrative rules," they are still enforceable against organizations who offer motorcycle safety courses to the public.

Sincerely,

Nicholas J. Spaeth

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