

MOTORCYCLE: Points assessed for failure to wear helmet.
HELMETS:
DRIVERS LICENSE:

OPINION NO. 119
456 (1967)

January 9, 1968

Honorable Thomas A. David
Director
Department of Revenue
Jefferson Building
Jefferson City, Missouri



Dear Mr David:

This is in answer to your request for an opinion of this office, which so far as here pertinent reads as follows:

" * * * does the operation of a motor cycle without a helmet or protective headgear constitute a moving violation as contemplated under the provisions of paragraph 1(1), Section 302.302, Revised Statutes of Missouri? If so, would the assessment of two points upon conviction thereof be appropriate?"

House Bill 120, passed by the 74th General Assembly, repealed Section 302.020, RSMo 1959, and reenacted a new section in lieu thereof to be known as 302.020. Subsection 3, provides as follows:

"Every person operating or riding as a passenger on any motor cycle, as defined in section 301.010 RSMo, upon any highway of this state shall wear protective headgear at all times the vehicle is in motion. The protective headgear shall meet reasonable standards and specifications established by the director."

Violation of the provisions of this statute is a misdemeanor. Section 302.340, RSMo 1959.

The assessment of points for conviction of traffic violations is governed by Section 302.302, RSMo Supp. 1965, which provides in part as follows:

"1. The director of revenue shall put into effect a point system for the suspension and revocation of chauffeurs' and operators' licenses. Points shall be assessed only after a conviction or forfeiture of collateral. The initial point value is as follows:

Honorable Thomas A. David

(1) Any moving violation of a state law or county or municipal traffic ordinance not listed in this section, other than a violation of vehicle equipment provisions ? points (except any violation of a municipal stop sign ordinance where no accident is involved, 1 point) * * * "

The term "Highway", as used in these statutes is described as "any public thoroughfare for vehicles, including state roads, county roads and public streets, avenues, boulevards, parkways, or alleys in any municipality;" 302.010 RSMo Supp. 1965.

"Moving violation" is defined in Section 302.010(10), RSMo Supp. 1965, as "that character of traffic violation where at the time of violation the motor vehicle involved is in motion, except that the term does not include the driving of a motor vehicle without a valid motor vehicle registration license, or violations of sections 304.170 to 304.240, RSMo, inclusive, relating to sizes and weights of vehicles;"

Since operating a motorcycle without a proper headgear by definition would be a "moving violation", the question is, "whether such a conviction would constitute a violation of the equipment provisions of the statute."

The provisions of these statutes are not ambiguous. Under Section 302.020, supra, the operator of a motorcycle upon the highways of the state shall wear a protective headgear at all times the vehicle is in motion and failure to comply with this provision constitutes a misdemeanor. The headgear must comply with the standards and specifications provided by the Director of Revenue. A person convicted of violating this provision of the statute comes within the provisions of Section 302.302, supra, in that it is a "moving violation" of the state law and under this section points shall be assessed against the operator's license as provided in this section.

In enacting Section 302.302, supra, the legislature expressly exempted persons convicted of violating the motor vehicle equipment provisions of the statute from having points assessed against their license. Certainly the protective headgear an operator of a motorcycle is required to wear is not considered vehicle equipment and does not come within this exemption. If the legislature had intended to exempt persons convicted of violating this provision of the statute, it could have done so by express provision.

Honorable Thomas A. David

CONCLUSION

It is the opinion of this office that points are to be assessed against the license of a person convicted of operating a motorcycle without wearing headgear approved by the Director of Revenue.

The foregoing opinion, which I hereby approve, was prepared by my assistant Moody Mansur.

Yours very truly,



NORMAN H. ANDERSON
Attorney General