

MOTOR VEHICLES: Motorized Bicycles. Iowa Code Chapter 321: §§ 321.1, 321.234, 321.382 (2009). A bicycle is not a vehicle or motor vehicle. An individual may lawfully ride bicycles that meet the definition in Iowa Code section 321.1(40)(c)(2) on the streets and highways in this State. A bicyclist may ride a section 321.1(40)(c)(2) bicycle on the highways of the State regardless of whether the bicyclist can proceed up a three percent grade on dry concrete pavement at a minimum speed of twenty miles per hour, with or without the use of the electric motor. Bicycles that fit into the definition in section 321.1(40)(c)(2) are not required to be licensed or registered. (Baumann to Maynes, Adair County Attorney, 8-12-09) #09-8-1

August 12, 2009

Mr. Michael D. Maynes
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205 ½ East Iowa Street
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Dear Mr. Maynes:

You have asked the opinion of our office regarding application of provisions in Iowa Code chapter 321 to motorized bicycles. Specifically, you pose the following questions: does a vehicle that meets the definition of "bicycle" in Iowa Code section 321.1(40)(c)(2) qualify as a motor vehicle; is it lawful to ride a section 321.1(40)(c)(2) bicycle on the "city streets"; are bicyclists required to meet the requirements in section 321.382 in order to ride a bicycle on the street or highway; and are there any licensing or registration requirements for a section 321.1(40)(c)(2) bicycle? We address your questions in turn.

The first question you pose is whether a section 321.1(40)(c)(2) bicycle qualifies as a "motor vehicle"? You cite to a 1980 opinion of this office which concludes that a bicycle with an electric motor is a motor vehicle and, if such a bicycle were used in the motorized mode, it could not be "operated on the highways of this state if unable to meet the requirements of § 321.382." *See* 1980 Op. Att'yGen. 801 (#80-8-14). As you are well-aware, in 1980, there was no distinction between a motorized bicycle and a bicycle with an electric motor of less than one horsepower, as there is now. Therefore, we will revisit the issue.

Section 321.1(40)(c)(2) provides that a "bicycle" can be "a device having two or three wheels with fully operable pedals and an electric motor of less than seven hundred fifty watts (one horsepower), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden, is less than twenty miles per hour." Iowa Code § 321.1(40)(c)(2) (2009). This new subsection was added to the law on April 20,

2006, through House File 2525 (“HF 2525”). See 2006 Iowa Acts, 81st G.A., ch. 1068, §§ 6 & 41. Prior to April 20, 2006, a bicycle was defined simply as “a device having two wheels and having at least one saddle or seat for the use of a rider which is propelled by human power.” Iowa Code § 321.1(40)(c) (2005); *id.* § 321.1(40)(c)(1) (2009). Now, a bicycle includes devices that fit into either of these two alternative definitions.

To determine whether a bicycle with an electric motor of less than one horsepower is a motor vehicle, it is useful to compare the section 321.1(40)(c)(2) definition of the term “bicycle” with the definitions of other conveyances in chapter 321. See *State v. Sluyter*, 763 N.W.2d 575, 581 (Iowa 2009) (“[W]e ‘construe statutes that relate to the same or a closely allied subject together as to produce a harmonious and consistent body of legislation.’” (quoting *State v. Casey’s Gen. Stores, Inc.*, 587 N.W.2d 599, 601 (Iowa 1998))).

The plain language of the new subsection that defines “bicycle” provides that a bicycle is a “device.” Iowa Code § 321.1(40)(c)(2) (2009). A traditional motorless bicycle is also a “device.” *Id.* § 321.1(40)(c)(1). Another “device” that can be ridden and is defined in the motor vehicle laws is an “electric personal assistive mobility device.” *Id.* § 321.1(20B). Such a device is defined as “a self-balancing, nontandem two-wheeled device powered by an electric propulsion system that averages seven hundred fifty watts and is designed to transport one person with a maximum speed on a paved level surface of less than twenty miles per hour.” *Id.* § 321.1(20B). In contrast, the statutory subsection defining “motorized bicycle” provides that “‘motorized bicycle’ means a motor vehicle” *Id.* § 321.1(40)(b).¹ Motorcycles are also motor vehicles. *Id.*

¹In addition to adding the new definition of the word “bicycle,” HF 2525 changed the definition of the term “motorized bicycle.” See 2006 Iowa Acts, 81st G.A., ch. 1068, § 6. HF 2525 removed from the definition of “motorized bicycle” the requirement that a motorized bicycle include “an engine having a displacement no greater than fifty cubic centimeters.” *Id.* A “motorized bicycle” is now defined by statute as

a motor vehicle having a saddle or a seat for the use of a rider, designed to travel on not more than three wheels in contact with the ground, and not capable of operating at a speed in excess of thirty miles per hour on level ground unassisted by human power.

Iowa Code § 321.1(40)(b) (2009). A “motorized bicycle” is also known as a “moped.” See Iowa Driver’s Manual 2008-2009, Iowa Department of Transportation, 10-11, available at <http://www.iowadot.gov/mvd/ods/dlmanual/dlmanual.pdf> (explaining that license “restriction 5” is

§ 321.1(40)(a). A “motor vehicle” is simply defined as a “vehicle which is self-propelled and not operated upon rails.” *Id.* § 321.1(42)(a). Finally, the definition of “vehicle” specifically excludes “any device moved by human power.” *Id.* § 321.1(90)(a).

We must assume that the legislature chose its words carefully and intentionally used the word “device” in the new bicycle subsection rather than using the words “motor vehicle” or “vehicle.” *See Schadendorf v. Snap-On Tools Corp.*, 757 N.W.2d 330, 337 (Iowa 2008) (explaining that to determine the meaning of a statute and intent of the legislature, the Iowa Supreme Court looks at the “words chosen by the legislature, not what it should or might have said” (citing *Auen v. Alcoholic Beverages Div.*, 679 N.W.2d 586, 590 (Iowa 2004))). Presumably, the legislature would not have added the new definition of “bicycle” to the Code if it had intended for such bicycles to be identical to “motorized bicycles.” *See State v. Pub. Employment Relations Bd.*, 744 N.W.2d 357, 361 (Iowa 2008) (“[W]e will not interpret a statute so as to render any part of it superfluous.” (quoting *Am. Legion v. Cedar Rapids Bd. of Review*, 646 N.W.2d 433, 439 (Iowa 2002))); *see also* Iowa Code § 4.4(3) (“In enacting a statute, it is presumed that: . . . (3) A just and reasonable result is intended.”). Based on the plain language of section 321.1, we conclude that the legislature purposely used the word “device” in section 321.1(40)(c)(2) to ensure that the newly defined bicycle is treated like traditional motorless bicycles and not like motorized bicycles, motorcycles, or other motor vehicles.

We believe the courts would decline to search for meaning beyond the express terms of the statute because the text of section 321.1(40)(c)(2) is plain and its meaning is clear. *State v. Schultz*, 604 N.W.2d 60, 62 (Iowa 1999). Because the legislature used the word “device” in section 321.1(40)(c)(2), we conclude that a bicycle is not a vehicle or motor vehicle. This interpretation corresponds with the dictionary definition of “device” which means “a piece of equipment or a mechanism designed to serve a special purpose or perform a special function.” Merriam Webster’s Collegiate Dictionary 317 (10th ed. 1995).

Next, we consider whether it is lawful to ride a section 321.1(40)(c)(2) bicycle on the “city streets.” “The terms ‘street’ and ‘highway’ are defined in the Code as interchangeable terms” *Christenson v. Iowa Dist. Court for Polk County*, 557

a moped or motorized bicycle license); *id.* at 53 (explaining the laws pertaining to mopeds or motorized bicycles); *see also* Iowa Code § 322G.2(13) (excepting mopeds from the definition of “motor vehicle” in Iowa’s lemon law); 761 IAC 634.4(2)(j) (providing that mopeds are not approved for use in driver education courses).

Mr. Michael D. Maynes
Adair County Attorney
Page 4

N.W.2d 259, 262 (Iowa 1996). “‘*Street*’ or ‘*highway*’ means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.” Iowa Code § 321.1(78) (emphasis in original).²

The Code contemplates that individuals may ride bicycles on streets and highways, because it provides that, if a person is riding a bicycle on a highway, then the person is subject to the provisions of chapter 321 and “has all the rights and duties under [chapter 321] applicable to the driver of a vehicle, except those provisions of [chapter 321] which by their nature can have no application” *Id.* § 321.234(2). The Iowa Supreme Court has confirmed that it is lawful for a bicyclist to ride on the streets and highways of this State. *See Vasconez v. Mills*, 651 N.W.2d 48, 51 & 52-53 (Iowa 2002) (citing section 321.234(2) and explaining that the defendant was not entitled to a comparative fault instruction because the plaintiff bicyclist was not engaging in illegal conduct where he was riding on a county highway alone in a westerly direction near sunset). Although the courts have not spoken to whether individuals may ride section 321.1(40)(c)(2) bicycles on the streets and highways, we think the legislature intended such bicycles to be treated like traditional motorless bicycles that fit the definition in section 321.1(40)(c)(1). This is evidenced from the fact that the legislature simply added an alternative definition to the term “bicycle,” rather than creating a new term or new subsection. Accordingly, we conclude that individuals may lawfully ride bicycles that meet the definition in Iowa Code section 321.1(40)(c)(2) on the streets and highways in this State.

We turn to your third question which asks whether bicyclists are required to meet

² The term “street” is also defined in another section of the Iowa Code, where it is treated interchangeably with the term “road”:

As used in [chapter 306] or in any chapter of the Code relating to highways: . . .

“*Road*” or “*street*” means the entire width between property lines through private property or the designated width through public property of every way or place of whatever nature if any part of such way or place is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

Iowa Code § 306.3(8) (emphasis in original).

Mr. Michael D. Maynes
Adair County Attorney
Page 5

the requirements in section 321.382 in order to ride a bicycle on the street or highway?
Iowa Code section 321.382 is a motor vehicle law that provides:

A motor vehicle or combination of vehicles, which cannot proceed up a three percent grade, on dry concrete pavement, at a minimum speed of twenty miles per hour, shall not be operated upon the highways of this state.

Iowa Code § 321.382. As stated previously herein, bicyclists must obey the motor vehicle laws when riding a bicycle on a highway except for those motor vehicle laws “which by their nature can have no application [to bicyclists].” *Id.* § 321.234(2).

We conclude that the legislature purposely named only “motor vehicles” and “combination[s] of vehicles” in section 321.382 with the intent to exclude bicycles from its requirements. *See Kucera v. Baldazo*, 745 N.W.2d 481, 487 (Iowa 2008) (explaining that the Iowa Supreme Court is guided by the rule of “expressio unius est exclusio alterius,” which “recognizes that legislative intent is expressed by omission as well as inclusion, and the express mention of one thing implies the exclusion of others not so mentioned”). In another statute pertaining to minimum highway speeds, the legislature used the word “conveyance” in addition to the words “vehicle” and “implement” in order to encompass all types of slow-moving devices. *See Iowa Code § 321.285(e)*. That section prohibits “[a]ny kind of vehicle, implement, or conveyance incapable of attaining and maintaining a speed of forty miles per hour” from “using the *interstate* road system.” *Id.* (emphasis added). It is apparent that the legislature knows how to include bicycles in prohibitions regarding minimum speeds on the highways and would have done so in section 321.382 if it had intended to require bicyclists to meet the requirements of the statute. *See Casey’s Gen. Stores*, 587 N.W.2d 602-03 (declining to interpret a criminal statute to impose vicarious liability where the legislature had not expressed its intent to do so and where the legislature had expressly imposed vicarious liability for civil violations of the same statute). If the legislature had intended to require bicyclists to meet the requirements of section 321.382 in order to ride on the streets and highways, we think it would have included broader language in the statute.

We conclude, therefore, that a bicyclist may ride a section 321.1(40)(c)(2) bicycle on the highways of the State regardless of whether the bicyclist can proceed up a three percent grade on dry concrete pavement at a minimum speed of twenty miles per hour, with or without the use of the electric motor. To say it differently, a bicyclist need not comply with section 321.382 in order to ride a bicycle on the street or highway. By its

Mr. Michael D. Maynes
Adair County Attorney
Page 6

nature, section 321.382 is one of the provisions of chapter 321 that has no application to bicycles.

Finally, you ask whether there are any licensing or registration requirements for a section 321.1(40)(c)(2) bicycle? To answer your question regarding the licensing and registration requirements for bicycles with an electric motor of less than one horsepower, it is, again, useful to compare “bicycles” to “motorized bicycles” and “electric personal assistive mobility devices.”

There are special licensing requirements for motorized bicycles. *See* Iowa Code § 321.189(7) (providing detailed rules for obtaining a motorized bicycle license). An individual may have to pass a driving test or complete a motorized bicycle education class in order to obtain such a license. *See* 761 IAC 604.31(1)“e”; 761 IAC 604.31(2)“a”; *see also* 761 IAC 602.24 (providing that a “motorized bicycle license is a restricted, noncommercial Class C license”); 761 IAC 636 (providing rules for “motorized bicycle rider education”). “Motorized bicycles” must also be registered and have a “manufacturer’s certificate of origin” affixed to them. *See* 761 IAC 400.58(2) (providing that registration plates be issued for “motorized bicycles”); 761 IAC 400.1 (requiring a “manufacturer’s certificate of origin”); *see also* 49 C.F.R. § 567.4 (requiring manufacturers of motor vehicles to provide a certification label); Iowa Code § 321.30(1)(g) (stating that the Iowa Department of Transportation or the county treasurer may refuse registration and issuance of a certificate of title if a new vehicle does not have a “manufacturer’s or importer’s certificate”). Among other requirements, the manufacturer’s certificate of origin must contain a vehicle identification number or “VIN” and it must “specify the maximum speed” of the motorized bicycle. 761 IAC 400.1; *see also* Iowa Code § 321.1(91) (defining “vehicle identification number”).

The Code specifically provides that there are no such requirements for electric personal assistive mobility devices. Iowa Code section 321.235A explicitly states that a person who is at least sixteen years of age may operate such a device on sidewalks and bikeways without having a driver’s license or permit, without providing proof of financial responsibility, and without registering or licensing the device. Iowa Code § 321.235A(1). The statute does not mention an educational requirement.

By contrast to the laws governing motorized bicycles and electric personal assistive mobility devices, the Code and rules are virtually silent regarding the licensing and registration requirements for bicyclists. There are a few administrative rules regarding registration of bicycles, but they pertain only to bicycles used at the University

Mr. Michael D. Maynes
Adair County Attorney
Page 7

of Iowa and Iowa State University. *See* 681 IAC 4.4(4) (providing that bicycle registration with the University of Iowa is optional); 681 IAC 4.28(4) (providing that “any person who rides, parks or propels a bicycle on any university property” shall be registered with the university). Due to the lack of a statute or rule setting forth registration and licensing requirements for bicycles, we must conclude that bicycles that fit into the definition in section 321.1(40)(c)(2) are not required to be licensed or registered. Such bicycles should receive the same treatment as the more traditional motorless bicycle. This conclusion is supported by the fact that it would be impossible for the DOT to register and title bicycles because bicycle manufacturers do not include a VIN or a manufacturer’s certificate of origin on bicycles. *See* Iowa Code § 321.30(1)(g); 761 IAC 400.1.

In summary, we reach the following conclusions in response to your questions. A bicycle is not a vehicle or motor vehicle. An individual may lawfully ride bicycles that meet the definition in Iowa Code section 321.1(40)(c)(2) on the streets and highways in this State. A bicyclist may ride a section 321.1(40)(c)(2) bicycle on the highways of the State regardless of whether the bicyclist can proceed up a three percent grade on dry concrete pavement at a minimum speed of twenty miles per hour, with or without the use of the electric motor. Bicycles that fit into the definition in section 321.1(40)(c)(2) are not required to be licensed or registered.

Sincerely,



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