



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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Colonel W. S. Flaherty, Superintendent
Department of State Police
Post Office Box 27472
Richmond, Virginia 23261-7472

Dear Colonel Flaherty:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the Code of Virginia.

Issue Presented

You inquire regarding the legal classification of a "ScootCoupe." Specifically, you ask how two existing "ScootCoupe" models, the PS50 and the PS150, would be classified under the current *Code of Virginia*.

Response

It is my opinion that under § 46.2-100, which controls the legal classification of all vehicles, the PS50 would be classified as a "motor vehicle" and the PS150 would be classified as a "motorcycle."

Background

The "ScootCoupe" is a three-wheeled vehicle that is powered by a gasoline motor. There are two models of the ScootCoupe. The PS50, the smaller of the two, is powered by a 49.2cc engine and reaches a top speed of 30 miles per hour. The PS150 is powered by a 147.5cc engine and reaches a top speed of 55 miles per hour. Both vehicles sit close to the ground; they have a maximum height of 50 inches and the seat is less than 24 inches from the ground. Both models also have a Vehicle Identification Number ("VIN") that has been issued and attached by the manufacturer. The manufacturer states on its website that "most states" classify the PS150 as a "motorcycle" and the PS50 as a "moped/scooter."¹ In addition, the manufacturer claims that the ScootCoupe is "street legal in all 50 states."²

Applicable Law and Discussion

Virginia law provides that a "vehicle" includes "every device in, on or by which any person or property is or may be transported or drawn on a highway, except devices moved by human power or used

¹See <http://www.scootcoupe.com/faqs.html> (last visited Feb. 11, 2013).

²*Id.*

exclusively on stationary rails or tracks.”³ As their description demonstrates, both ScootCoupes are “vehicles” because they are capable of transporting a person on a highway and neither is moved by “human power” (they are gasoline powered) nor used exclusively on stationary rails or tracks. Additionally, a “motor vehicle” is defined as “every vehicle as defined in this section that is self-propelled or designed for self-propulsion except as otherwise provided in [Title 46.2].”⁴ The PS50 and the PS150 are self-propelled vehicles; thus, unless the ScootCoupes can satisfy the definitional requirements of any other category set forth in Title 46.2, they remain under the general category of “motor vehicle.”

Most relevant to your inquiry are the classifications for “motorized skateboard or scooter,” “moped,” “motorcycle,” “motor-driven cycle,” and “off-road motorcycle.”⁵ I will address each seriatim, applying the elements characterizing each category, as set forth in the plain language of the governing statute, to the design of the ScootCoupes.

Section 46.2-100 defines “motorized skateboard or scooter” as

every vehicle, regardless of the number of its wheels in contact with the ground, that (i) has no seat, but is designed to be stood upon by the operator, (ii) has no manufacturer-issued vehicle identification number, and (iii) is powered by an electric motor having an input of no more than 1,000 watts or a gasoline engine that displaces less than 36 cubic centimeters.

Because ScootCoupes are designed with seats, a VIN, and a gasoline engine of greater than 36 cubic centimeters displacement, they clearly fall outside this legal category.

A “moped” is defined as “every vehicle that travels on not more than three wheels in contact with the ground that has (i) a seat that is no less than 24 inches in height, measured from the middle of the seat perpendicular to the ground and (ii) a gasoline, electric, or hybrid motor that displaces less than 50 cubic centimeters.”⁶ Both ScootCoupe models, however, sit close to the ground, having a seat height less than 24 inches. I therefore conclude that neither the PS50 nor the PS150 can be classified as a “moped.”

Section 46.2-100 defines a “motorcycle” as “every motor vehicle designed to travel on not more

³ VA. CODE ANN. § 46.2-100 (Supp. 2012).

⁴ *Id.*

⁵ Virginia law establishes further classifications of motor vehicles. Examples include “all-terrain vehicles,” which are “characterized by large, low-pressure tires, [and] a seat designed to be straddled by the operator . . . ;” “utility vehicles,” designed for off-road use, powered by an engine of no more than 25 horsepower, and used for general maintenance, security, agricultural, or horticultural purposes;” a “farm tractor” and a “farm utility vehicle,” both of which are designated “for use exclusively on a farm, agricultural, or horticultural service.” Section 46.2-100.

The section also includes definitions for alternative forms of transportation: “golf cart,” “designed to transport persons playing golf and their equipment on a golf course;” “low speed vehicle,” “any four-wheeled electrically-powered vehicle, . . . whose maximum speed is greater than 20 miles per hour but not greater than 25 miles per hour;” “specially constructed vehicle,” which is a device “not originally constructed under a distinctive name, make, model, or type;” “toy vehicle,” which is “any motorized or propellant-driven device that has no manufacturer-issued vehicle identification number. . . ;” “electric personal assistive mobility device,” defined as “a self-balancing two-nontandem-wheeled device” or what is commonly known as a “Segway;” and “bicycle,” a device that is propelled “solely by human power.” *Id.* It is clear, though, that neither the PS50 nor the PS150 would fit into any of the aforementioned categories.

⁶ Section 46.2-100.

than three wheels in contact with the ground and is capable of traveling at speeds in excess of 35 miles per hour.” As noted above, both the PS50 and the PS150 constitute “motor vehicles,” and each has only three wheels. Because its maximum speed is 55 miles per hour, the PS150 qualifies as a “motorcycle” under this definition. The PS50, however, will not fall into this legal definition because its maximum speed is only 30 miles per hour.

Virginia law further classifies motorcycles under § 46.2-100. These subcategories include a “motor-driven cycle,” which is a “motorcycle that has a gasoline engine that (i) displaces less than 150 cubic centimeters; (ii) has a seat less than 24 inches in height, measured from the middle of the seat perpendicular to the ground; and (iii) has no manufacturer-issued vehicle identification number” and “off-road motorcycles,” which are defined as “every motorcycle designed exclusively for off-road use by an individual rider with not more than two wheels in contact with the ground.” As discussed above, the PS50 is not a motorcycle, so it does not qualify for either classification. Although the PS150 is a motorcycle, it has a VIN, rides on three wheels, and is designed for on-road use, so it also is excluded from these legal definitions.

In summary, from a legal or statutory standpoint both the PS50 and the PS150 are properly classified in the broader categories of “vehicle” and “motor vehicle.” The PS150 may be further classified as a “motorcycle.” The PS50 may not be further classified. As a result, the PS50 should be classified as a “motor vehicle” and the PS150 should be classified as a “motorcycle” for purposes of Virginia law,⁷ including any issues concerning criminal and/or traffic enforcement laws affecting motor vehicles and/or motorcycles.

Conclusion

Accordingly, it is my opinion that under § 46.2-100, which controls the legal classification of all vehicles, the PS50 would be classified as a “motor vehicle” and the PS150 would be classified as a “motorcycle.”

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink that reads "Ken C II". The signature is stylized and written in a cursive-like font.

Kenneth T. Cuccinelli, II
Attorney General

⁷ Therefore, both the PS50 and the PS150 would be subject to all laws regarding driver licensing, § 46.2-300 *et seq.*; motor vehicle titling and registration, § 46.2-600; insurance, § 46.2-706; and inspections, § 46.2-1157, to which motor vehicles and motorcycles are subject.