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Iowa Department of Transportation
Motor Vehicle Division
6310 SE Convenience Blvd.
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RE: Whether a Bicycle Constitutes a “Vehicle” under Iowa Code §321.299

Dear Mark,

The purpose of this letter is to provide legal advice to the Iowa Department of Transportation’s Motor Vehicle Division (MVD) on the issue of whether a bicycle constitutes a “vehicle” under Iowa Code §321.299. For the reasons set forth below, it is my opinion that:

1. A bicycle does constitute a “vehicle” under Iowa Code §321.299; and
2. The rules set forth in that section relating to the overtaking and passing of vehicles also apply to the overtaking and passing of bicycles.

Let me briefly set forth the basis for this legal advice. Iowa Code §321.299 provides:

321.299. Overtaking a vehicle

The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules hereinafter stated:

1. The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left of the other vehicle at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

2. Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle and shall not increase the speed of the overtaken vehicle until completely passed by the overtaking vehicle.

Iowa Code §321.299.

Iowa Code §321.299 does not indicate whether the term “vehicle” (as used in that section) encompasses bicycles. Other provisions of the Iowa Code illustrate that the legislature does in fact distinguish between motor vehicles and bicycles (*See*, Iowa Code §321.1(42(a) definition of “Motor Vehicle” and Iowa Code §321.1(4)(c)(1) definition of “Bicycle”). As a result, it is tempting to conclude that the rules set forth in §321.299 do not apply to bicycles.

However, that conclusion cannot be supported in light of the language of Iowa Code §321.234(2), which provides:

321.234. Bicycles, animals, or animal-drawn vehicles

- * * *
2. A person, including a peace officer, *riding a bicycle on the highway is subject to the provisions of this chapter and has all the rights and duties under this chapter applicable to the driver of a vehicle*, except those provisions of this chapter which by their nature can have no application or those provisions for which specific exceptions have been set forth regarding police bicycles.

Iowa Code §321.234(2) (emphasis added).

Iowa Code §321.234(2) applies to a person riding a bicycle on a “highway.” The Iowa Supreme Court has recognized that the terms “highway” and “street” are interchangeable. Christenson v. Iowa District Court for Polk County, 557 N.W.2d 259, 262 (Iowa 1996); Iowa Code §306.3(8); Iowa Code §314.13(6); Iowa Code §321.1(78). The Iowa Supreme Court has also embraced the general concept that it is lawful for a bicyclist to ride on the streets and highways of this State. Vasconez v. Mills, 651 N.W.2d 48, 52-53 (Iowa 2002)(Iowa Supreme Court references Iowa Code §321.234(2) and rejects motorist’s defense that injured bicyclist was at fault for riding on a county road instead of a bike path, riding alone and riding into the sunset because “none of this conduct is illegal and ascribing negligence to such choices would be ludicrous if applied to any other motorist.”). However, this general concept does not apply to highways with speed restrictions. *See*, Iowa Code §321.285(e).

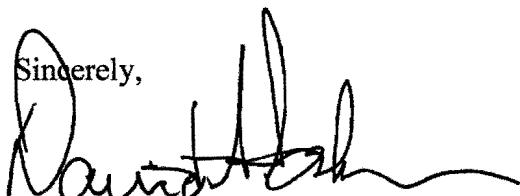
The above authorities (and especially the rationale from the Vasconez case) are directly applicable to the issue addressed in this letter. All support a determination that the rules set forth in Iowa Code §321.299 relating to the overtaking and passing of vehicles also apply to the overtaking and passing of bicycles on the streets and highways of the State of Iowa.

It is important to note that additional protections for bicyclists are contained in Iowa Code §321.281. The acts prohibited under §321.281 are acts that could occur at any time and not just during the act of overtaking and passing under §321.299. For example, §321.281(1) prohibits steering unreasonably close to or toward a bicyclist on a roadway or shoulder under any

circumstances (regardless of whether the motorist is overtaking or passing as described under §321.299) and §321.281(2) prohibits knowingly throwing or projecting objects at bicyclists at all times (again, regardless of whether the individual throwing the object was overtaking or passing under §321.299).

Thus, the prohibitions contained in §321.281 compliment (and do not contradict) the application of the overtaking and passing rules contained in §321.299 to bicyclists on the streets and highways of the State of Iowa.

Let me know if you have any questions. Thanks.

Sincerely,

DAVID S. GORHAM
Special Assistant Attorney General

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