

Opinion No. 2013-060

August 5, 2013

Colonel Stan Witt, Director
Arkansas State Police
1 State Police Plaza Drive
Little Rock, AR 72209-4822

Dear Colonel Witt:

I am writing in response to your request for my opinion on the following question:

May All-Terrain Vehicles (ATVs), as defined under Ark. Code Ann. § 27-21-102, generally be operated on Arkansas streets and highways if they meet the safety equipment requirements for motor vehicles?

As background, you report as follows:

The Arkansas State Police has taken the enforcement position that the plain language of Ark. Code Ann. § 27-21-106 prohibits ATVs from operating on streets and highways regardless of safety equipment, unless such operation falls under a specific statutory exemption, such as crossing from one field to another while hunting or engaging in farming operations.

The Arkansas Department of Finance and Administration's Office of Motor Vehicles, however, has created procedures whereby an ATV owner can purportedly title, register, and operate their ATV on streets and highways generally, after submitting an affidavit stating they have met certain equipment requirements under Chapters 36 and 37 of Title 27 of the Arkansas Code. . . .

Arkansas State Police troopers have continued to issue warnings and citations to ATV operators for violation of § 27-21-106 regardless of the Office of Motor Vehicles' procedure.

You have attached to your request, *inter alia*, a blank form affidavit of compliance with equipment and lighting standards that the Office of Motor Vehicles (the "OMV") reportedly requires be submitted in connection with an application to register and license an ATV.¹

RESPONSE

Although an ATV might presumably be modified to an extent that would render it exclusively an "automobile" subject to registration and licensing, I do not believe it would invariably qualify as such merely by complying with statutory automotive lighting and safety equipment standards. In my opinion, an ATV modified to comply with automotive safety requirements might in some instances remain an "all-terrain vehicle" subject to statutory street- and highway-access restrictions. Given this possibility, the answer to your question as stated is "no." I consequently question the propriety of the OMV's general policy of registering and licensing for street and highway access any ATV that has complied with these statutory requirements. In my opinion, in some if not all instances, such a modified ATV would remain subject to the statutory restrictions set forth in A.C.A. § 27-21-106. The law on this question, however, is confusing and would benefit by legislative clarification.

¹ The Affidavit requires an applicant to attest that his ATV meets the following vehicle requirements:

- § 27-36-209 Head Lamps
- § 27-36-215 Tail Lights and Reflectors
- § 27-36-216 Signal Lights and Signal Devices
- § 27-37-702 Seat Belts
- § 27-37-202 Horns and warning devices
- § 27-37-301 Safety Glass Mandatory – Windshield
- § 27-37-303 Windshield Wipers Required
- § 27-37-305 Rearview Mirrors
- § 27-37-401 Only pneumatic rubber tires permitted
- § 27-37-501 Brakes
- § 27-37-601 Noise or smoke producing devices prohibited

As reflected in the above factual background, your question arises from a dispute between the OMV and the Arkansas State Police (“ASP”) regarding the legal status of an ATV that has been modified to comply with the lighting and safety requirements for motor vehicles set forth in the Code. My inquiries reveal that the OMV considers such modified vehicles to qualify as “automobiles,” which are consequently capable of being registered and licensed² and, as such, cleared for general access to public roads and highways.³ The ASP disagrees, considering such modified ATVs to remain “all-terrain vehicles” as statutorily defined,⁴ and hence subject to the following access restrictions:

- (a) It is unlawful for any a person to operate an all-terrain vehicle on a public street or highway of this state, even if the all-terrain vehicle otherwise meets the equipment standards of § 27-20-104,^[5] except under the following conditions and circumstances:

² See A.C.A. § 27-14-601(a)(1) (Supp. 2011) (setting a fee for the registration and licensing of “automobiles equipped with pneumatic tires, used for the transportation of persons”).

³ The registration requirements for vehicles moved upon a public street or highway are set forth in subchapter 7 of chapter 14, title 27 of the Code. Subject to certain inapplicable exceptions, A.C.A. § 27-14-703 (Repl. 2008) expressly provides that “[e]very motor vehicle . . . when driven or moved upon a highway . . . shall be subject to the provisions of this chapter.”

⁴ Subsection 27-21-102(1) of the Code (Supp. 2011) defines the term “all-terrain vehicle” as follows:

(A) “All-terrain vehicle” means a vehicle that:

- (i) Has three (3), four (4), or six (6) wheels;
- (ii) Is fifty inches (50”) or less in width;
- (iii) Is equipped with nonhighway tires;
- (iv) Is designed primarily for off-road recreational use; and
- (v) Has an engine displacement of no more than one thousand cubic centimeters (1,000 cc).

(B) “All-terrain vehicle” includes a recreational off-highway vehicle.

(C) “All-terrain vehicle” does not include a golf cart, riding lawn-mower, or lawn or garden tractor[.]

⁵ Section 27-20-104 of the Code (Supp 2011) sets forth equipment standards for “motor-driven cycles and all motorcycles.” The statute quoted in my text thus provides that an ATV’s modifications to comply with

(1) A person may operate an all-terrain vehicle on a public street or highway if the all-terrain vehicle is:

(A) Used in farming or hunting operations; and

(B) Operated on a public street or highway in order to get from one (1) field to another;

(2)(A) An all-terrain vehicle may be operated upon on a public street or highway if:

(i) The all-terrain vehicle needs to make a direct crossing of the street or highway to get from one (1) area to another . . . [.]⁶

In my opinion, the OMV's analysis only indirectly addresses the most immediate question – namely, whether an ATV's compliance with automobile equipment standards would in itself qualify the vehicle as an "automobile" capable of being registered and licensed, thus at least potentially rendering it roadworthy for general street and highway travel. If the answer to this question were "no," the vehicle would be unregistrable and hence precluded from general access to public streets and highways.⁷ Moreover, as suggested above, even if the answer were "yes," the question would remain whether the vehicle nonetheless continued to

motorcycle equipment standards will not warrant granting it general access to streets and highways. Because the statute does not expressly state a similar exclusion for ATVs modified to comply with *automobile* equipment standards, the OMV has reportedly concluded that the latter category of vehicle may be registered and licensed, thus permitting it general access to streets and highways. This argument is basically an application of the legal principle of construction know as "expressio unius est exclusio alterius." See *Gazaway v. Greene County Equalization Bd.*, 314 Ark. 569, 575, 864 S.W.2d 233 (1993): "The phrase *expressio unius est exclusio alterius* is a fundamental principle of statutory construction that the express designation of one thing may properly be construed to mean the exclusion of another." *Chem-Ash, Inc. v. Arkansas Power & Light Co.*, 296 Ark. 83, 751 S.W.2d 353 (1988); *Venhaus v. Hale*, 281 Ark. 390, 663 S.W.2d 930 (1946).

⁶ A.C.A. § 27-21-106 (Supp. 2011), as amended by Acts 2013, No. 69, § 1. This statute permits certain other uses of ATVs that are not germane to your question. Section A.C.A. § 27-21-109(b) of the Code (Repl. 2008) further establishes a defense to what would otherwise be liability under A.C.A. § 27-21-106 under circumstances involving reasonable ATV travel to an off-road trail from one's home or another off-road trail across a public street or highway located outside city limits. See Op. Att'y Gen. 2009-159 (discussing this exception).

⁷ See A.C.A. §§ 27-14-601 and -703.

qualify as an “ATV”⁸ subject to the above discussed statute restricting ATV access to public streets and highways.⁹

With respect to the first of these questions, the subchapter of the Code sanctioning the registration and licensure of “automobiles” unfortunately fails to define the term.¹⁰ Perhaps the most pertinent, if somewhat circular, definition appearing elsewhere in the Code is the following:

“Automobile” means a motorized vehicle equipped with pneumatic tires used for the transportation of persons, as commonly known and recognized by the Revenue Division of the Department of Finance and Administration, as a pleasure vehicle for licensing purposes as established by § 27-14-601(a).¹¹

In my opinion, this “definition” should not be read as declaring an “automobile” to be whatever the OMV determines it to be, but rather as suggesting that the term’s meaning is self-evident – i.e., “commonly known and recognized” – a conclusion bolstered by the fact that the legislature also uses the term without definition in the recited licensing statute.

⁸ A vehicle might meet all of the automotive safety requirements itemized in note 1, *supra*, and still qualify as an ATV under the criteria set forth in note 4, *supra*. I draw this conclusion because even a vehicle “equipped with *nonhighway* tires” (emphasis added) and “designed primarily for off-road recreational use” – characteristics of an ATV as statutorily defined – might incorporate all of the features itemized in note 1.

⁹ It is an accepted principle of statutory construction that a general statute normally does not apply where there is a specific statute governing a particular subject matter. *Donoho v. Donoho*, 318 Ark. 637, 887 S.W.2d 290 (1994). In accordance with this principle, to the extent that a particular ATV can be characterized as one type of automobile, the statute restricting road-access for ATVs would appear to control.

¹⁰ The subchapter of the Code dealing with registration and licensing is set forth at A.C.A. § 27-14-601 through 612 (Repl. 2008 & Supp. 2011), as amended by Acts 2013, No. 592, § 1.

¹¹ A.C.A. § 22-8-203(1) (Repl. 2004), contained in the Automobile and Pickup Truck Acquisition Act for the State of Arkansas, A.C.A. §§ 22-8-201 through -211 (Repl. 2004 & Supp. 2011), as amended by Acts 2013, Nos. 311 and 1405. The term is unhelpfully defined elsewhere in the Code as including “any vehicle which is self-propelled, including, but not limited to, passenger cars, trucks, vans, and buses,” A.C.A. § 14-304-102(1) (Supp. 2011), and as “a passenger automobile or pickup truck,” A.C.A. § 26-52-415(d) (Repl. 2008).

Despite the suggestion that the meaning of the term “automobile” is “commonly known and recognized,” given my present need to parse that meaning, I must look to case law for guidance. Perhaps most directly applicable is a definition of “automobile” offered by the Arkansas Supreme Court, which has twice endorsed the following as the “ordinary and popular acceptance” of the term: “a motor-driven vehicle having four wheels, a body, sides, and top, suitable and intended for the conveyance of persons,” not including “such a vehicle as a motorcycle.”¹²

Without belaboring the point, I will simply note that an ATV would not necessarily qualify as an “automobile” under this definition merely by virtue of its meeting the equipment requirements set forth in the Affidavit of Vehicle Requirements attached to your request. An ATV in compliance with these requirements might lack, for instance, court-defined features of an automobile such as “four wheels” and “sides.”

Moreover, as noted above, even a modified ATV that qualified as an “automobile” might remain an ATV under the statute defining an “all-terrain vehicle,” thus presumably leaving the street- and highway-access restrictions in place. Determining whether a particular vehicle had such a dual aspect would entail conducting a factual inquiry in each instance, thus apparently precluding a blanket policy of registration and licensing of the sort the OMV has adopted. This conclusion would appear to apply conversely to the ASP’s likewise blanket policy of treating every modified ATV as too insubstantial to fall within the legislature’s intended parameters for unrestricted highway travel.

The foregoing discussion is at best tentative, but it is unfortunately the best I can offer given the ambiguities in the law. An ATV as defined in note 1, *supra*, might in theory be modified to qualify as a tiny “automobile” under the somewhat shopworn definition of that term set forth in the case law discussed above. I question, however, that the legislature intended that such a vehicle be accorded unrestricted access to highways simply by virtue of its meeting the minimal requirements for automobiles lighting and safety set forth in the two subchapters of the Code recited in your request.¹³ Given the uncertainty in the law, I can

¹² *Life and Casualty Insurance Co. of Tennessee v. Gilkey*, 255 Ark. 1060, 1063, 505 S.W. 2d 200 (1974), quoting *Neighbors v. Life and Casualty Insurance Co. of Tennessee*, 182 Ark. 356, 31 S.W.2d 418 (1930).

¹³ The OMV, based upon material you have attached to your submission, may harbor similar reservations. The referenced material – a document, captioned “**GOLF CARTS, UTILITY VEHICLES**” – provides in pertinent part:

frankly understand how two agencies of state government could reach different conclusions on this issue. I am an executive official, however, and cannot resolve this dispute by in effect making law. I can only opine that it appears unwarranted to adopt a blanket policy of registering and licensing for general street and highway use any ATV modified to comply with the statutes at issue. Legislative clarification is warranted.

Assistant Attorney General Jack Druff prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM/JHD:cyh

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1. A golf cart, utility vehicle or low-speed vehicle may be titled and registered for street use only if it has been modified to comply with lighting and equipment requirements set forth under Chapters 36 and 37 of Title 27 of the Arkansas Code. . . .
 2. An affidavit is required from the applicant reflecting the year, make, model and VIN of the vehicle, certifying that the applicant is familiar with the requirements set forth in Chapters 36 and 37 of Title 27 of the Arkansas Code; and that the vehicle has been modified to comply with such requirements.

My inquiries reveal that this document, although drafted by OMV personnel, has reportedly never been adopted as an OMV rule or regulation. The terms “golf cart,” “utility vehicle” and “low-speed vehicle” are undefined.