



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2016-061

August 25, 2016

The Honorable Scott Baltz
State Representative
4589 Highway 90 West
Pocahontas, AR 72455-1231

Dear Representative Baltz:

This is in response to your request for an opinion on the following questions:

1. Is it permissible under Arkansas State law to operate 4x4 Side-by-Sides on public streets and roads?
2. Are 4x4 Side-by-Sides capable of being licensed for operation on public streets and roads?

RESPONSE

I am unable to provide you with a definitive “yes or no” answer to your questions. The only clear answer I can give is that if the vehicles in question meet the statutory definition of an “all-terrain vehicle” (ATV), then under Arkansas law they are not permitted to be driven on public streets and highways, except under limited circumstances, and will not be licensed for such.

Even if a specific vehicle is not an ATV under Arkansas law, there remains a question whether the vehicle can be licensed for operation on the public roads and highways. This question is an intensely factual one that cannot be answered within the limited scope of an official Attorney General’s opinion.¹

¹ The law regarding which motor vehicles may be licensed and which ones may not—and the criteria for making such determinations—remains confusing and would benefit from legislative

DISCUSSION

Question 1: Is it permissible under Arkansas State law to operate 4x4 Side-by-Sides on public streets and roads?

Question 2: Are 4x4 Side-by-Sides capable of being licensed for operation on public streets and roads?^{2]}

Section 27–14–703 of the Arkansas Code requires that “every motor vehicle driven or moved upon a highway”³ be registered with the Office of Motor Vehicles. A “motor vehicle” is defined as a “vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.”⁴ The Office of Motor Vehicles of the Department of Finance and Administration (OMV) has the regulatory authority for the registration, licensing, and operation of motor vehicles in Arkansas.⁵

State law establishes the fees for registration and licensing of such motor vehicles in section 27-14-601. Absent from the list of vehicles that can be licensed under section 27-14-601 are what are called all-terrain vehicles (ATVs). This is because State law prohibits people from operating ATVs on public streets or highways, except in limited circumstances.⁶

clarification. *Accord* Op. Att’y Gen. 2013-060 (discussing the licensing of ATVs that had been modified to meet the equipment and lighting standards required of a motor vehicle for licensing, and suggesting legislative clarification).

² I have grouped these questions because I believe they are necessarily bound together.

³ “Highway” is defined in Title 27, the part of the Code addressing transportation matters, as “the entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular traffic.” Ark. Code Ann. § 27-14-216 (Repl. 2014).

⁴ Ark. Code Ann. § 27–19–206.

⁵ *See id.* § 27-14-401 *et seq.*

⁶ *See* Ark. Code Ann § 27-21-106. Those limited circumstances include if the ATV is used in farming or hunting operations and is operated on a public street or highway to get from field to another, or if an ATV’s operator needs to make a direct, perpendicular crossing of a street or highway to get from one area to another. *Id.*

An ATV has a specific definition in the Arkansas Code as 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;⁷
- (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).⁸

Also included in the definition of an ATV are vehicles called "recreational off-highway vehicles."⁹ A recreational off-highway vehicle is defined in the Code as a vehicle that:

- (i) Has four (4) or six (6) wheels;
- (ii) Is seventy-five inches (75") 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).¹⁰

The above definitions use the coordinating conjunction "and." Grammatically, this means that all of the elements in the definition must be met for a vehicle to be considered an ATV. If a motor vehicle meets that definition, then, while it must be registered,¹¹ it will not be licensed for operation on the public streets or highways under section 27-14-601.

⁷ "Non-highway tires" are pneumatic tires that are six inches or more in width, designed for use on a wheel with a rim diameter of 14 inches or less, and that uses an operating pressure of 20 pounds per square inch or less as recommended by the vehicle manufacturer. Ark. Code Ann. § 27-21-102(2).

⁸ Ark. Code Ann. § 27-21-102(1)(A).

⁹ *Id.* at § 27-21-102(1)(B).

¹⁰ *Id.* at § 27-21-102(4)(A).

¹¹ *See* Ark. Code Ann. § 27-20-201 *et seq.*

If one or more of the elements of the above statute is absent from a particular vehicle, then that vehicle cannot be classified as an ATV. But that does not necessarily mean it can be licensed for operation on or otherwise used on public roads or highways. As a general matter, State law makes it a misdemeanor for any person to drive or move on any highway any vehicle that “is in such unsafe condition as to endanger any person” or that does not meet statutory lighting and equipment requirements.¹²

OMV will generally register and license vehicles in accordance with section 27-14-601 if the vehicles meet the lighting and equipment standards referenced above, unless State law prohibits a vehicle from being operated on the public roads and highways (such as the prohibition on ATVs discussed above). With respect to the vehicles you are inquiring about, it is my understanding that OMV, at the point when someone applies for registration and licensing, will undertake a factual analysis of the vehicle based on the documentation the applicant presents, including the vehicle manufacturer’s statement of origin. The applicant must also sign an affidavit that the vehicle meets the lighting and equipment standards. The determination whether to issue a license for the vehicle is made by OMV at that point.

Because of the intensely factual nature of the inquiry, I am unable to state categorically that the vehicles you have asked about either may or may not be licensed and permitted on the public roads and highways.

Sincerely,



LESLIE RUTLEDGE
Attorney General

¹² Ark. Code Ann. § 27-36-101. The lighting and equipment requirements are found at Ark. Code Ann. §§ 27-36-209 (head lamps), 27-36-215 (tail lamps and reflectors), 27-36-216 (signal lamps and signal devices), 27-37-201 and -702 (seat belts), 27-37-202 (horns and warning devices), 27-37-301 (safety glass), 27-37-303 (windshield wipers), 27-37-305 (rearview mirrors), 27-37-401 (only pneumatic tires permitted), 27-37-501 (brakes), and 27-37-601 (noise- or smoke-producing devices prohibited).