

-----Original Message-----

From: quig@usff.com [mailto:quig@usff.com]

Sent: Monday, December 10, 2001 8:45 PM

From: quig@usff.com

To: glewis@dmv.state.nv.us

Subject: Request for information.

Director Lewis:

Last year, I had the pleasure of visiting some friends in Battle Mountain. A pleasure, except for the part where I was pulled over, ticketed, and forced to park my motorcycle (over 500 miles from home) because the patrol officer (while quite polite and respectful) took exception to my protective headgear. It was his impression that your state law requires that I wear what he called a "D-O-T approved helmet," so he would not let me proceed without one. This action was approved by the officer's sergeant.

In reading your statutes, I found: "Title 43. Vehicles and Watercraft. Chapter 486. Bicycles, Motorcycles and Similar Vehicles. Operation and Equipment. Section 486.231. : 1. The department shall adopt standards for protective headgear and protective glasses, goggles or face shields to be worn by the drivers and passengers of motorcycles and transparent windscreens for motorcycles."

And then I found: "CHAPTER 481 - ADMINISTRATION OF LAWS RELATING TO MOTOR VEHICLES, NRS 481.015 Definitions. Except as otherwise provided in Chapters 480 and 486A of NRS, as used in this Title, unless the context otherwise requires: 1. 'Department' means the department of motor vehicles."

I concluded that you are the person best qualified to answer my question(s), thus this inquiry: Could you please tell me how a rider supposed to determine, with certainty (so I can prove it to the officer), which helmets have been approved by the department? Is there some sort of certification sticker? Or do you have a list of approved helmets? (If so, could you send it to me, or tell me where to find it?)

Thank you,

Richard Quigley  
2960 Porter Street, pmb #12  
Soquel, CA 95073  
quig@usff.com

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From: Ginny Lewis <glewis@dmv.state.nv.us>  
To: "quig@usff.com" <quig@usff.com>  
Subject: RE: Request for information.  
Date: Tue, 11 Dec 2001 15:36:00 -0800

Dear Richard;

We have research your question about the department adopting standards for protective headgear. The Nevada Administrative Code (NAC) adopted Federal Regulations contained in 49 C.F.R. 571.218 in reference to helmet standards. I have obtained a copy of those federal regulations for you and will mail them to the address you provided in your e-mail. **The regulations are very detailed** and I believe, will answer all your questions.

Hope this helps. Have a good day.

Ginny Lewis  
Director, DMV

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From: quig@usff.com [mailto:quig@usff.com]  
Sent: Tuesday, December 18, 2001 5:50 PM  
To: Ginny Lewis  
Subject: RE: Request for information.

Dear Ginny,

Thank you very much for the follow-up e-mail, and the packet containing the copy of Nevada Administrative Code Section 486.015 (which I picked up in the mail yesterday) - which clearly indicates that the Department has adopted 40 C.F.R. 517.218 as Nevada's standard for "protective headgear." (I am assuming for the sake of this exchange, that you are using the terms "helmet" and "headgear" interchangeably.)

When you said the regulation was "very detailed," you weren't kidding. I don't know anyone capable of wrapping themselves around the detail contained in that standard, least of all me . . . I barely graduated high school.

However, I did understand the portion you highlighted: S5.6.1(e) "The symbol DOT . . . shall appear on the outer surface . . . from the bottom of the edge of the posterior portion of the helmet ("headgear")."

It is interesting that you chose that particular portion of the standard to highlight. The headgear I was wearing last Spring -- at the time I was stopped, cited and ordered to

## Exhibit C

Page 3 of 16

park my motorcycle outside Battle Mountain -- bore the symbol "DOT" on the posterior portion of the outer surface. The citing officer was not impressed. Nor was his sergeant. I was un-horsed (that's what I call it when my motorcycle is impounded, or in this case ordered parked) in spite of meeting the S5.6.1(e) requirement, without respect to that evidence of compliance, and never informed about the other criteria.

Nor am I sure what I would have done if the officer had handed me the standard the department has adopted. But, I do believe that I would not have found it any easier to prove I was in compliance than I was capable of finding and wearing the "D-O-T approved" helmet the officer otherwise required. (btw: I knew at the time that there is no such thing as a "D-O-T approved" anything, much less a helmet.) (btw: btw: The officer issued two other citations to people with me on that day -- one to my partner from here in Santa Cruz, and the other to the people we were visiting in Battle Mountain.) Fortunately (or unfortunately, perhaps) the District Attorney elected not to prosecute any of them.

Can we try this another way?

Let's say you are out riding a motorcycle and a Nevada Highway Patrol officer pulls you over and tells you that he believes your headgear does not meet the requirements of Nevada's mandatory headgear law. What proof would you provide? And what authority would you cite?

Do the experiment for yourself. Give someone (even a State Patrol officer, if you can find one) a copy of the standard, and a helmet, and ask him if he can tell you, by comparing the two, if the helmet meets the standard. I suspect that, absent a personal opinion of what constitutes a helmet, relying solely on the standard and the helmet to compare to the standard, no one can tell you. So where does that leave me? Relying on the subjective opinion of the citing officer (of a standard no one short of an engineer could hope to understand)?

I refuse to believe that the officer who stopped me outside Battle Mountain was anything but the best the State Patrol has to offer. The professionalism demonstrated by the citing officer, and his supervisor, was beyond reproach. I believe the officer was incapable of acting in anything but good faith, and I know I was acting in good faith; but, I'm sure you would agree, the outcome was simply not acceptable? And that was with a great cop! Imagine the outcome if I had come across one of lesser professionalism?

Now, doesn't it seem reasonable to you that I have more assurance that I can prove that I am in compliance with Nevada's helmet law than that? It sure does to me. It's a very disquieting feeling to be set afoot so far from home, with no idea what to do.

At this point, I'm fresh out of ideas. In fact, just knowing that I can be held liable not complying with that standard you sent, has exacerbated what was an already

substantial concern about returning to Nevada. Please advise.

Looking forward to hearing from you,

thanks,

Richard Quigley  
2960 Porter Street, pmb #12  
Soquel, CA 95073  
quig@usff.com

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From: Ginny Lewis <glewis@dmv.state.nv.us>  
To: "quig@usff.com" <quig@usff.com>  
Subject: RE: Request for information.  
Date: Wed, 19 Dec 2001 06:55:49 -0800

Dear Richard;

Thanks for your e-mail. Not to pass the buck, but I have forwarded your dilemma to Public Safety (NHP) for assistance. At this point there isn't anything more I can do. You should be hearing from NHP for guidance. Please let me know if you don't and I will follow-up with them. Good Luck..and Happy Holidays Ginny Lewis

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From: quig@usff.com [mailto:quig@usff.com]  
Sent: Monday, March 18, 2002 9:32 AM  
To: Ginny Lewis  
Subject: RE: Request for information.

Ms Lewis:

I remain in need of an answer about compliance with Nevada's helmet law. I have \*not\* been contacted by NHP . . . I am following up as you suggested. Is there some reason that you do not want, or feel obligated, to help me? There is a substantial motorcycling event coming up soon in Nevada. The delay in getting an answer from your department, or the NHP (how do I contact them?), probably means I will not be attending that event. Maybe at this point it is not too late to begin to prepare for next Spring (2003)?

Sincerely,  
Richard Quigley  
quig@usff.com

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From: Ginny Lewis <glewis@dmv.state.nv.us>  
To: "quig@usff.com" <quig@usff.com>  
Subject: RE: Request for information.  
Date: Tue, 19 Mar 2002 07:19:18 -0800

Richard;

I again gave your e-mail to Director Kirkland who is over Highway Patrol. I was assured someone would be contacting you regarding this helmet issue. Director Kirkland's e-mail is rkirkland@dps.state.nv.us. I apologize for their delay in getting back to you.

Ginny Lewis  
Director, DMV

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From: quig@usff.com  
Date: Tue, 19 Mar 2002  
To: rkirkland@dps.state.nv.us  
Cc: "David Hosmer" <DHosmer@dps.state.nv.us>  
Subject: Re: request for info . . .

Director Kirkland:

I was referred to your office by Director Ginny Lewis of the Nevada DMV.

I had contacted Ms. Lewis late last year in an attempt to help me understand how to comply with Nevada's helmet law, with certainty, before I return.

Last Spring, having traveled from Santa Cruz, California, I attended a Freedom Rally in Battle Mountain, which went fine except for my encounter with the NHP.

The traffic stop and citation, according to the officer, were for "not wearing a D-O-T approved helmet". The citing officer and his supervisor (that I requested to the scene) were very professional, among the best I've ever encountered.

However, in spite of their professionalism, because of what I perceive as problems with the way Nevada's helmet law statute is written, what the citing officer ultimately did in attempting to enforce the statute, was clearly not acceptable -- I was literally un-horsed (made to shut down and park my motorcycle) over 500 miles from home. We loaded my motorcycle into the back of a pickup truck and I was done. I am 58 years old, and been riding since I was 14, and nothing like that had ever happened to me before. (Okay, my dad did impound my motorscooter over a homework issue when I was 15 or 16, but that doesn't count because it was in my yard at the time, not hundreds of miles from home.)

## Exhibit C

Page 6 of 16

I did manage to get back to California, but there's no doubt that the Nevada requirement that a motorcyclist wearing a "DOT approved helmet" created an impossible standard, which has pretty much taken Nevada off the list of places I can go and ride safely -- there's no way I can afford to hire someone follow me around in a pickup truck for such circumstances. btw: The Battle Mountain prosecutor elected to dismiss rather than prosecute the citation (or the two others that were written to my riding companions, one of whom was from California and the other a Nevadan).

So, my question for Ms Lewis, and now for you, is: Do you have any suggestions as to how a motorcyclist can comply, with certainty, with Nevada's helmet law? (When I say "with certainty", I'm talking about some standard of proof that I can show an officer which will assure him that my headgear meets whatever is required by the statute.) Ms Lewis provided me with a copy of C.F.R.49 FMVSS218, but I can't make head nor tail of that. And as polite and professional as the officer was who stopped me, or his sergeant; I don't believe either of them could have made sense of that standard either . . . even if one of us had had a copy on that day.

It would indeed be nice if the D-O-T approved helmets, but I have it from them that they do not. In the absence of certification by NHTSA (of the D-O-T), and/or a list of helmets that comply with your statute, it seems to me that there is no answer to my question. And if that is true, then what?

I won't be attending the Laughlin run this year if I cannot get this resolved in time. Although I was righteously impressed with the professionalism of your officers (at least the ones I met), I just can't afford to be shut down by such misunderstanding, so far from home, know what I mean?

Thank you in advance for your prompt attention to this matter.

Sincerely,  
Richard Quigley  
quig@usff.com

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Date: Tue, 19 Mar 2002 09:22:51 -0800  
From: "Richard Kirkland" <RKirkland@dps.state.nv.us>  
To: <quig@usff.com>  
Cc: "David Hosmer" <DHosmer@dps.state.nv.us>  
Subject: Re: request for info . . .

Mr. Quigley, I am in receipt of your information from Mrs. Lewis. I have assigned this matter to Colonel Hosmer, the Chief of the Highway Patrol. I am certain that we will be able to unravel this issue and hopefully to obtain a reasonable conclusion. I have asked the NHP to respond to you within the next 10 days. If you do not hear from them please advise me. Sincerely, Richard Kirkland

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From: quig@usff.com  
Date: 04/01/02 02:33PM  
To: rkirkland@dps.state.nv.us  
Cc: "David Hosmer" <DHosmer@dps.state.nv.us>  
Subject: Re: request for info . . .

Mr. Kirkland:

I am contacting you to advise you, as you requested, that (to my knowledge) I have not yet heard back from the people you directed me to. I'm not complaining, just advising.

However, while I have your attention I would also like to pass on an e-mail I got from one of your residents this morning . . . sorta F.Y.I.:

This morning I received a fine of \$100.00 for wearing a small helmet on highway 95. The helmet is one of the typical so called novelty helmets that everyone in Nevada wears, that rides a cruiser/Harley. The cop was a biker himself! :( Is it actually illegal to wear a non dot approved helmet?

Thanks,  
Marc

I do maintain a web site that asks for information about helmet laws -- such as the amount of fines in various parts of the United States -- which is undoubtedly what prompted the contact by Marc. However, it seems to me that his experience does point to the ongoing problem with the lack of clarity in the statute for both compliance, and enforcement, of your helmet law. (As I recall, some number of years ago the Federal Court issued the only injunction ever issued against the enforcement practices of the California Highway Patrol, for this very behavior.)

## Exhibit C

Page 8 of 16

What the whole thing breaks down to is this: We (bikers) are left at the mercy of some officer (good or bad) making the decision that our headgear is a "novelty" helmet, while what is required is a "dot approved helmet." But there's no such thing! This whole concept of a "dot approved" anything is absurd. DOT doesn't approve ANYTHING! Nothin'! Nada! Not even the helmets worn by your officers.

I realize that it makes everything weird once you take into account that there is no agency to determine compliant equipment, much less an objective standard for what constitutes protective headgear; but it seems to me that that's what both bikers and law enforcement officers are facing, every day . . . some officer, well-meaning or no, makes the call based on what? How do either of us determine, much less prove, that a given helmet does or does not meet the requirements of the statute? There appears to be nothing in the statute that explains it.

I've heard from a friend in Reno that you are a very effective and hard working guy. I will not waste your time. This is an issue that really needs to be cleared up, and I'm prepared to do anything I can to help.

I look forward to your response.

Sincerely,

Richard Quigley  
quig@usff.com

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Date: Wed, 03 Apr 2002 12:58:57 -0800  
From: "Richard Kirkland" <RKirkland@dps.state.nv.us>  
To: <quig@usff.com>  
Subject: Re: request for info . . .

Mr. Quigley.....Thanks for the headsup. The Chief of the Highway Patrol is out of town this week but I will deal with his admin on this issue. I understand your issue and we WILL get to the bottom of this. I ride a Harley as well and have all my life. I dealt with the Helmet issue numerous times. We'll get the factual answer.....;RK

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Date: Wed, 03 Apr 2002 07:19:36 -0800  
From: "Mark Malloy" <MMalloy@dps.state.nv.us>  
To: <quig@usff.com>  
Cc: "David Hosmer" <DHosmer@dps.state.nv.us>, "Richard Kirkland" <RKirkland@dps.state.nv.us>  
Subject: Motorcycle Helmets

Mr. Quigley,

You have contacted Director Kirkland's office regarding the issue of motorcycle helmets. The State statute (NRS) refers to regulations adopted by the Department (NAC) which refers to the federal regulations (CFR). Attached are the NRS, NAC and CFR for regulations regarding helmets.

If we can be of any further assistance, please contact me.

Captain Malloy  
775-684-4867

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Date: Wed, 03 Apr 2002 13:55:41 -0800  
From: "Mark Malloy" <MMalloy@dps.state.nv.us>  
To: <quig@usff.com>  
Subject: Motorcycle Helmets

This is a follow-up to my previous e-mail regarding your questions on motorcycle helmets and the enforcement of laws in Nevada. The gentleman that sent you the e-mail regarding the citation, Marc, would you forward this to him, as I do not have his e-mail address. I would like to try to contact him to obtain information regarding the traffic stop in which he received this citation.

Thank You,  
Captain Malloy  
Nevada Highway patrol  
775-684-4867

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Date: Wed, 03 Apr 2002 14:28:58 -0800  
From: "Mark Malloy" <MMalloy@dps.state.nv.us>  
To: <quig@usff.com>  
Subject: Would you please contact me at 775-684-4867.

Would you please contact me at 775-684-4867. Apparently I do not have all the information to respond to your concerns. I would like to discuss your issues to resolve them to your satisfaction.

Captain Malloy  
Nevada Highway Patrol

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From: quig@usff.com  
Date: 06/19/02 01:45PM  
To: rkirkland@dps.state.nv.us  
Cc: "David Hosmer" <DHosmer@dps.state.nv.us>  
Subject: Re: request for info . . .

Mr. Kirkland:

I apologize in advance if I am being inappropriately impatient, or inadvertently unsympathetic to some condition that I do not know exists; but please appreciate that I have exercised great patience with getting this helmet law issue resolved to no avail. I have been operating on the belief that Nevada and California function differently - that Nevada is not so corrupt that we cannot settle these matters without having to involve the courts. In court, I win. Out of court, we both do.

Is there any possibility that I can get you to help me resolve the question about compliance with Nevada's helmet law without requiring an order from the U.S. District Court? I have done everything you have asked of me, and I have provided all the pertinent information I have available to me. If there is good reason for the delay in getting this matter resolved, I can accept that. If not, I do not understand why the lines of communication have been shut down (without notice) and replaced with a bureaucratic stonewall more consistent with the attitude of my home State, California, than the reputation of Nevada.

I intend to return to Nevada, or at the very least pass through Nevada, on my motorcycle in the near future. If I am once again shut down over the department's lack of ability to provide me with a means of understanding how to comply with your helmet law, that is not going to look very good for the people I have made my inquiries to. Please advise me as to what you would like me to do.

thank you,  
Richard Quigley  
quig@usff.com  
831-685-3108

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## Exhibit C

Page 11 of 16

Date: Fri, 21 Jun 2002 11:04:06 -0700  
From: "David Hosmer" <DHosmer@dps.state.nv.us>  
To: <quig@usff.com>  
Cc: "Dave Kieckbusch" <DKieckbusch@dps.state.nv.us>, "Mark Malloy" <MMalloy@dps.state.nv.us>, "Richard Kirkland" <RKirkland@dps.state.nv.us>  
Subject: Re: request for info . . .

Dear Sir,

The Nevada Highway Patrol is acting on this situation. To date 06-21-02, I have personally sent a request for Attorney General's Opinion to our assigned Deputy Attorney General as to what constitutes a legal helmet. Additionally we will be addressing the issue with our troopers thru training. I do appreciate you bringing this issue to our attention. I would also suggest that you contact one of the motorcycle riders groups in Nevada that may have legal counsel so that a Nevada resident may involve their legislator. Additionally, I will be having Capt. Malloy contact the Office of Traffic Safety as they have a motorcycle safety training program and should be involved in this process.

David S. Hosmer  
Colonel  
Nevada Highway Patrol

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Date: Mon, 24 Jun 2002 06:57:30 -0700  
From: "Richard Kirkland" <RKirkland@dps.state.nv.us>  
To: <quig@usff.com>  
Subject: Re: request for info . . .

Quig...I have been out of the office but I have an e-mail from Colonel Hosmer that was apparently sent to you...they are working on this issue and I believe they will come to a definitive answer...thanks for keeping this alive as we need to get a resolution.....RK

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From: quig [mailto:quig@usff.com]  
Sent: Friday, November 15, 2002 9:11 PM  
To: David Hosmer  
Cc: Dave Kieckbusch; Mark Malloy; Richard Kirkland; Ginny Lewis; Brian Stockton  
Subject: Re: request for info . . .

Colonel Hosmer,

I really appreciate your efforts at obtaining an opinion from the Nevada Attorney General's Office. I talked with Deputy Attorney General Brian Stockton today and (among other things) was informed that an AG's Opinion regarding Nevada's helmet law has been published.

It appears to me that what the AG did was offer you some points for discussion with the Nevada Legislature ("suggestions" was the term he used I believe) as to what they might do to help fix the situation. Can this really wait for that?

Moreover, although he answered your question, at least the one he was willing to address, directly; mine remains unanswered: "How can a motorcyclist comply, with certainty, with the provisions of Nevada's helmet law?"

According to my understanding of the opinion, and most glaring in it's exposing the root problem, were suggestions #4 & 5 -- the part that reads, in part, that the biker is responsible for proving his innocence by making "a showing that the helmet conforms to the standard."

With great respect to Mr. Stockton, that is an absolute impossibility! There is absolutely no way for me to prove that a helmet complies with FMVSS 218. If called on to do so, the manufacturer would be required to submit 8 helmets for testing, and even then it would not take into account such things as age, whether or not a helmet has been dropped, and a myriad of other circumstances that would keep a helmet from performing up to the standard. I can no more prove that a helmet complies with the standard (by the rules applied in the AG's interpretation of FMVSS 218) than your officers could "prove" that it does not.

Besides, isn't that moving the burden of proof, against the presumption of innocence, into the wrong court (no pun)? I mean, say I walked into a liquor store and left with \$100 I didn't have when I walked in? Would I have to prove that I did not rob the liquor store? Or would the State have to prove that I did?

Incidentally, I had no idea that a violation of the Nevada helmet law constituted a misdemeanor. I can assure you, sir, that there is absolutely no chance I will be riding a motorcycle in or through Nevada under such circumstances. That's just ridiculous!! (Are you aware that the United States Supreme Court approved confiscation by the State,

## Exhibit C

Page 13 of 16

and forfeiture by the owner, of a vehicle that has been shown to have been used in the commission of a misdemeanor? The case [disgrace that it is] is entitled Bennis v. Michigan.)

So far, the only thing I have learned from the AG's opinion (beyond the fact that anyone who rides a motorcycle in Nevada just doesn't understand the nature or extent of the peril) is that even he concedes that enforcement of the statute creates confusion. It's just that he puts the responsibility for fixing that one on me, and that's just not right.

What's next? In talking with Mr. Stockton, he indicated that he is not anxious to walk into Federal Court in anything other than an adversarial role, to get some sort of clarification as to whether or not the statute can be constitutionally enforced -- which, of course, I believe it can't. I don't want to do that.

I think it is much better if, oh say, you and I walk into Federal Court and ask a Federal Judge if there is a way to enforce Nevada's helmet law in a way that does not violate my constitutional rights? And if so, how? (I propose that a list of helmets that comply with the statute would fix the problem, while at the same time knowing that there is no way any such list could ever be made. But that's the only way I can see that the objective evidence necessary to convict me of a crime, can be established.)

Again, please accept my thanks for putting the matter to the AG for an opinion. But please don't stop there. Please help me get something I can wrap myself around?

Thank you.

Sincerely,  
Richard Quigley  
quig@usff.com

Date: Sat, 16 Nov 2002 13:24:58 -0800  
From: "David Hosmer" <dhosmer@dps.state.nv.us  
To: "quig" <quig@usff.com, "Dave Kieckbusch" <dkieckbusch@dps.state.nv.us,  
"Richard Kirkland" <rkirkland@dps.state.nv.us  
Thread-Topic: request for info . . .

I see that you are just as concerned with the state of our helmet law as am I and my commanders. The burden of proof will be on the state or any individual law enforcement officer who chooses to write a citation under the existing Nevada Revised Statute. I have met with all of my commanders (Captains and Majors) and we (the Nevada Highway Patrol) are in the process of retraining all of our Troopers on this very issue. Clearly if a Trooper finds someone wearing a colander on their head that's a violation but if it looks like a helmet, it has a chin strap, and some type of reasonable padding to

## Exhibit C

Page 14 of 16

protect the rider we are advising all Troopers that they individually will be responsible for demonstrating to the court that the helmet in question is in violation of the law.

The Nevada Highway Patrol is not in a position at this time to put forth a bill draft to change the statute however if you contact one of the motorcycle advocate groups in Nevada they may be able to get one of the legislators to sponsor the necessary changes. At this late date I believe legislators would be the only ones who could do so. I would be more than happy to testify at any hearing that the current statute is unworkable. Just so you are not mislead the Legislature is looking at having to fix a several hundred million dollar deficit this session and are limited to a 120 day session by the Nevada Constitution, so getting them to fix much else of anything will be very difficult.

Thank you in advance,

David S. Hosmer, Colonel

Nevada Highway Patrol

From: quig@usff.com

Sent: Sunday, November 17, 2002 11:02 AM

To: David Hosmer

Cc: "Dave Kieckbusch" <dkieckbusch@dps.state.nv.us, "Richard Kirkland" <rirkland@dps.state.nv.us Stockton

Subject: Re: request for info . . .

At 1:24 PM 11/16/02, David Hosmer wrote:

"I see that you are just as concerned with the state of our helmet law as am I and my commanders. The burden of proof will be on the state or any individual law enforcement officer who chooses to write a citation under the existing Nevada Revised Statute. I have met with all of my commanders (Captains and Majors) and we (the Nevada Highway Patrol) are in the process of retraining all of our Troopers on this very issue. Clearly if a Trooper finds someone wearing a colander on their head that's a violation but if it looks like a helmet, it has a chin strap, and some type of reasonable padding to protect the rider we are advising all Troopers that they individually will be responsible for demonstrating to the court that the helmet in question is in violation of the law."

That's where the problem lies. Either the State is required to adhere to the specifications in FMVSS-218, and only those specifications, or they are not. My understanding of interstate restrictions as they relate to equipment requirements, is that no state can adopt standards that are not identical to the Federal standards. The federal standard does not start by presuming what a helmet is. There's nothing in there about that. In fact, the helmet standard, FMVSS-218, only covers what a helmet is supposed to do if tested (leaving, incidentally, the subject of appearance out of it completely). How your officers are supposed to figure out what would happen during a test they are not qualified to conduct, is beyond me.

The helmet with the highest scores ever reported on a FMVSS-218 test, was about 3

## Exhibit C

Page 15 of 16

foot across and weighed about 60 pounds, but it absolutely maxed out every single element of the test standard with flying colors (except labeling). What? It wasn't a helmet? Because helmets don't weight 60 pounds, or are not 3 foot across? But where's that in the standard? Or any other description of what a helmet is . . . not even so much as a "it can't look like a baseball cap," or like a colander for that matter. There's nothing in the standard that would prevent a helmet from looking like just about anything.

I think we're all pretty sure we know what a helmet is. The problem starts when it becomes a misdemeanor violation if everyone's not in agreement about the particulars. And trust me, the courts aren't blessed with omniscience. They cannot be counted on to find justice just because. I can show you a California case where a three judge appellate panel upheld a helmet ticket conviction by a fourth, based on the fact that the letters on the DOT sticker on the biker's helmet were 1/16th of an inch too short.

By contrast, I can send you the opinion of a Georgia judge that found that the bikers baseball cap was, as a practical matter, "protective headgear," in that it protected his head from the sun, and dismissed a helmet ticket. What is "protective headgear"? And what, exactly, makes it safe?

If we accept only those things that are proven facts, there is as much evidence to support the contention that carrying a rabbit's foot will protect a motorcyclist, as there is to support the contention that wearing a helmet will protect a motorcyclist. Why not have a mandatory rabbit's foot law? At least the standard for a rabbit describes what a rabbit is, rather than just what happens when it is tested.

I have yet to see a legitimate statistical analysis that supports the contentions of those who believe that wearing a helmet makes riding a motorcycle safer. The figures cited in the AG's Opinion are bogus. At best, misstatements, but nonetheless bogus. When California's helmet law came into effect in 1992, our research shows that the number of riders wearing helmets increased from 50% to 99.999999%; the number of deaths per 100 accidents remained virtually the same; the number of miles traveled by motorcycle dropped 40% over the year before, but the total number or deaths only dropped 35%; and the number of broken necks went up 800%. (All but the miles traveled figures came from the CHP.)

If these pro-helmet do-gooders really cared about us, they would be putting their energy where it would actually do some good, like helping us prevent the main cause of injuries -- collisions with drivers who have not been taught how to share the roads with motorcyclists. Motorists who do not know that the second vehicle is responsible for 3 out of 4 motorcycle accidents that involve a second vehicle. They're not going to find that out by making bikers wear something nobody can describe in certain enough terms to prevent bikers from being wrongly punished because we can't describe it either.

I do not envy you your job in this matter.

(Colonel Hosmer continued...)

"The Nevada Highway Patrol is not in a position at this time to put forth a bill draft to change the statute however if you contact one of the motorcycle advocate groups in Nevada they may be able to get one of the legislators to sponsor the necessary changes. At this late date I believe legislators would be the only ones who could do so. I would be more than happy to testify at any hearing that the current statute is unworkable. Just so you are not mislead the Legislature is looking at having to fix a several hundred million dollar deficit this session and are limited to a 120 day session by the Nevada Constitution, so getting them to fix much else of anything will be very difficult."

I understand. Thank you.

Now that you've made the introduction (thank you again), I think it's best for me to just ask Brian Stockton (at the AG's office) how he thinks I should proceed. His AG's Opinion is not consistent with my understanding of how that Federal standard works (for one thing, the manufacturers are absolutely \*not\* required to test anything prior to certifying their belief in a helmet's compliance with FMVSS-218, as he indicated repeatedly in the opinion). I think that's the area where I should focus my attention for now.

Thank you again for all your help, Colonel. I have shared much of the content of our communications with a couple of my closest friends, and we all agree that you Nevada folks are something special. I consider it an honor to have met you, Mr. Kirkland, and Ms. Lewis. Thank you all. Job well done.

Sincerely,

Richard Quigley  
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