

Date: 02/20/04 08:41AM
To: C1902C@lvmpd.com
From: quig@usff.com (quig)
Subject: inquiry
Cc: R4504B@lvmpd.com, pan@mfhupy.com, sbianco@tfb.com, "Jackie Suthers" <JSuthers@BOLTofNevada.com>, "Monty Jensen" <ranchero72@frontiernet.net>

Las Vegas Metropolitan Police Department
Traffic Section
Las Vegas, NV

Lt. Corderio,

This is the follow-up letter to our telephone conversation today that I said I would be sending by way of introducing ourselves – Bikers Of Lesser Tolerance (BOLT) – and attempting to clarify what, exactly, will be expected of bikers relative to compliance with Nevada's helmet law at the Laughlin River Run this year by the Las Vegas Metropolitan Police Department.

BOLT is a bikers' rights organization made up of individuals from various areas and states, brought together by the occasional need to defend our rights against unwarranted abuses from the government and individuals within the government, by any and all lawful means. As I mentioned on the telephone, none of our members have any sort of criminal record, nor have dealings with anyone that does. We are businessmen and women, executives, engineers, truck drivers, paralegals, lawyers, secretaries and other professionals who enjoy riding our motorcycles and otherwise enjoying life. In short, no traditional biker profile fits our membership.

And, we are working on the assumption that the same is true of the Las Vegas Metropolitan Police Department – that your members are of the highest quality, meeting the highest standards and practices of law enforcement.

As State Director for BOLT of California, I have been assigned the responsibility for establishing what, if any, problems we might encounter with local law enforcement upon visiting the Laughlin area, and to seek and find ways to insure that such problems are solved before we arrive in the area to celebrate the 10th Anniversary of the formation of BOLT of California. I only see one area that needs attention, the helmet law.

As I explained on the telephone, I became aware a couple years ago, attending the inaugural Freedom Run for BOLT of Nevada in June of 2001, that the Nevada helmet law is problematic, in that, as even you admitted today, there are no specific guidelines as to what constitutes a compliant helmet – or did I misunderstand what you said?

I think the best and simplest way to get the answers I need, directly, is to ask, directly, what it is we need to know:

1. In an earlier attempt to reach someone of your stature in the department, your Public Relations Sergeant Rick Barela attempted to field my question(s) by asserting that in order to comply with Nevada's helmet law, a biker must wear a "D-O-T approved helmet." We that that is also what the Nevada POST training curriculum dictates. But is that the requirement enforced by the Las Vegas Metropolitan Police Department – that a biker wear a "D-O-T approved helmet"? (yes/no) If yes, what evidence would be required to demonstrate such approval? If no, . . .
2. Do you have any suggestions as to how a motorcyclist can (otherwise) comply, with certainty, with the provisions of Nevada's helmet law, as enforced by the Las Vegas Metropolitan Police Department? (When I say "with certainty," I mean with the certainty necessary to prove to the officer at the side of the road, or the judge in court, that a given headgear is in compliance. And in fairness, we are looking for minimal compliance . . . the very least the statute requires.)
3. If a biker is wearing something on their head that they assert is a helmet, what criteria is used by the citing officer to decide if that rider can be cited for violating Nevada's helmet law? (When I use the term "helmet," I mean to convey the "protective headgear" required by the Nevada statutes.)
4. If a biker is wearing something on their head that they assert is a helmet, what criteria is used by the citing officer to decide if the officer can have a biker's motorcycle impounded for violating Nevada's helmet law?
5. If a biker is wearing something on their head that they assert is a helmet, what criteria is used by the citing officer to decide if the biker can be taken into custody for violating Nevada's helmet law?
6. What is the minimum/maximum fine/penalty for violating Nevada's helmet law?

I appreciate being given the opportunity to raise these questions in advance of any possible confusion during the River Run. I assure you that we will do everything in our power to see that, with your help, there are no problems relating to helmets or helmet laws, between any member of BOLT and your agency or any other, at the River Run this year.

Thanks, in advance, for your prompt response. We have a lot of other preparation to do to be ready for the celebration in April.

Thank you.
Sincerely,
Richard Quigley, State Director
BOLT of California

At 11:02 AM 2/26/04, Carlos Cordeiro wrote:

hi Mr. Quigley....as you know we discussed this situation at length on the phone....bottom line our officers will use their "best judgement" and "common sense" in addressing this helmet issue in Laughlin...could the law be written better, and be more specific?, yes.....unfortunately, it isn't, thus our officers will address enforcement based on the law as written.....reference towing a bike if the motorcyclist is in violation of the helmet law;...I spoke with a traffic sergeant who worked there last year about this.....he said no bikes were towed for this, however some cyclists were told to park their bike until they got a helmet...obviously, if we were to find an operator, without any helmet, or one of those mini-"skullcaps"...my directions and expectations will be the same this year...enjoy your visit this year....

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Lt. Cardeiro,

Thank you for your timely reply.

I have one more question for you: Given your Oath of Office, given the obvious problems with the lack of specificity in Nevada's helmet law statute, and given the Legislature's refusal to fix that problem when it was brought to them last Spring; do you really feel comfortable with your response to my questions?

The United States Supreme Court has clearly enunciated the constitutional principle that statutes which do not give fair notice of prohibited conduct are unconstitutionally vague and unenforceable pursuant to substantive due process principles under the Fourteenth Amendment. In *Grayned v. City of Rockford* 408 U.S. 104, 108 (1971), the Court stated the basic principle of due process:

"It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application."

I think it would be rude of me to presume that you were aware that the United States Supreme Court has already come down against statutes that ultimately rely on no more than the "best judgment" or "common sense" of the police, particularly in matters having to do with enforcing a statute with no objective standard to begin with.

The Legislature had an opportunity to address and correct this problem last session. Their lack of interest in avoiding the ongoing potential for continued violations of motorcyclists' Constitutionally protected rights, resulting from the vagueness of the helmet law statute, is apparent. However, we do not believe the Legislature's inaction on the subject in any way requires the LVMPD to

support that disinterest in protecting the Constitution, with your own. Quite the contrary.

We believe the LMVPD has been given the power to decline to enforce a vague statute, and to refuse to apply arbitrary or capricious enforcement policies, in the name of State law. As a matter of fact, we believe you are not only empowered to decline such use of your police powers, but specifically required to honor the terms and conditions of your respective Oaths to support and defend the Constitution.

The right and honorable thing for the LVMPD to do is to notify the Nevada Legislature (or whoever) that the LMVPD will not be enforcing the helmet law until such time as you are provided with the standards necessary to allow such enforcement without violating anyone's Constitutionally protected rights to "notice" -- until you can answer the six questions we put to you, with certainty. We'd prefer to have you deal with the questions here and now, as opposed to deposition. (Did you know that the only enforcement policy injunction ever issued by the Federal Court against the California Highway Patrol, in their 75-year history, was the result of their attempt to add "best judgement" and "common sense" standards to California's helmet law?)

If between you, you can't even agree on a define-able standard, what are we expected to do? I asked around. None of our guys even know what you mean when you say "mini-'skullcaps'," never mind "protective headgear."

Come on, Lieutenant. This isn't rocket science. You are clearly a long time professional. You have the wherewithal to set aside your personal opinions and desires and do the right thing. Give us some assurance that we can meet in Laughlin in April without incident. Let's settle this between us now, in this forum, and keep the Federal Courts out of it.

If you can't answer all six questions as written, please answer the ones you can? If you have some other way of providing us with assurance that we will not be faced with the ramifications of failing the "attitude test" over allegations of violating a statute with which there is not way to prove we've complied, we're ready to discuss that. Let's work this out.

Sincerely,

Richard Quigley, State Director
BOLT of California

Exhibit E

Page 6 of 15

At 7:24 AM 2/27/04, Carlos Cordeiro wrote:

>Mr Quigley, I have forwarded your comments and concerns to LVMPD's
Legislative liasion and representative for his review....his name is Lt. Stan Olsen,
you can reach him at our Office of Inter-Governmental Services@ 229--5538

Date: 02/27/04 09:05AM
To: C1902C@lvmpd.com
From: quig@usff.com (quig)
Subject: inquiry
Cc: R4504B@lvmpd.com, pan@mfhupy.com, sbianco@tfb.com, "Jackie Suthers" <JSuthers@BOLTofNevada.com>, "Monty Jensen" <rancho72@frontiernet.net>

Lt. Cordeiro:

Thank you very much for forwarding our comments and concerns to Lt. Olsen. We appreciate whatever help we can get from any source.

However, we were informed that you are the person in charge of law enforcement for the Laughlin River Run this year, therefore the logical person to whom to direct our questions and concerns.

No doubt, Lt. Olsen might be the right person for you to use to deliver your message to the Legislature. But is he authorized to direct your actions relative to enforcement? If not, our Legislative efforts, even with supporting testimony of Colonel Hosmer of the Nevada Highway Patrol (at the direction of then Director Kirkland), and even admitting themselves the problems with the statute, did not resolve the issue. The Legislature seems quite content to leave these problems for you and your officers to work out (at your own risk). But how? That's what we need to know.

If you are not the person in charge of enforcement for the River Run, say so, refer us, and we will contact the person that is. If you are the ultimate decision maker, then let's get the questions addressed and answered?

Thank you.

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Exhibit E

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At 9:24 AM 2/27/04, Carlos Cordeiro wrote:

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Lt. Cordeiro:

Oh. I'm sorry. We were misinformed.

How do we get in contact with the Captain?

thanks,

Richard Quigley, State Director
BOLT of California

(No response.)

Date: 03/02/04 09:43AM
To: C1902C@lvmpd.com
From: quig@usff.com (quig)
Subject: inquiry
Cc: R4504B@lvmpd.com, pan@mfhupy.com, sbianco@tfb.com, "Jackie Suthers" <JSuthers@BOLTofNevada.com>, "Monty Jensen" <ranchero72@frontiernet.net>

Assistant Sheriff Cagorski:

What follows are a few e-mail that have gone back and forth between me and representatives of the LVMPD in an effort to avoid any problems with our intended visit to Laughlin for the 2004 River Run.

My initial contact was by telephone with your Public Relations Officer Rick Barela, which led almost immediately to a telephone conversation with Lt. Cordeiro. After talking with Cordeiro, it became apparent to me he was not going to be able to address and fix the problem without some help from above.

Here are the communications, back and forth, between he and myself, ending with his admission that he is not the person empowered to fix the problems.

It is our hope you are.

On February 20th, I sent the following to Cordeiro:

Las Vegas Metropolitan Police Department
Traffic Section
Las Vegas, NV

Lt. Cordeiro,

This is the follow-up letter to our telephone conversation today that I said I would be sending by way of introducing ourselves – Bikers Of Lesser Tolerance (BOLT) – and attempting to clarify what, exactly, will be expected of bikers relative to compliance with Nevada's helmet law at the Laughlin River Run this year by the Las Vegas Metropolitan Police Department.

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At 7:24 AM 2/27/04, Carlos Cordeiro wrote:

Mr Quigley, I have forwarded your comments and concerns to LVMPD's Legislative liasion and representative for his review....his name is Lt. Stan Olsen, you can reach him at our Office of Inter-Governmental Services@ 229--5538

I contacted Lt. Olsen (who said he would look into it and get back to me yesterday . . . or today . . . hasn't happened) and then wrote on February 27th:

Lt. Cordeiro:

Thank you very much for forwarding our comments and concerns to Lt. Olsen. We appreciate whatever help we can get from any source.

However, we were informed that you are the person in charge of law enforcement for the Laughlin River Run this year, therefore the logical person to whom to direct our questions and concerns.

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Thank you.

Sincerely,

Richard Quigley, State Director
BOLT of California

At 9:24 AM 2/27/04, Carlos Cordeiro wrote:

I will only be the traffic Lt.....there will probably be Captain there for this event...

We lost over a week waiting for a response to our questions from Lt. Cordeiro.

I am being pressed to get a resolution to these inquiries for the reasons stated in the e-mails to Cordeiro.

If you, or someone, in the department could please address and answer the six questions (above) put to the department through Cordeiro as soon as possible, that will allow us to know if we have a resolution, or if we are going to have to get some additional help.

Thank you in advance for your help in resolving this.

Sincerely,

Richard Quigley, State Director
BOLT of California

(No response.)