

BOLT of NEVADA

1950 2400 East St., Battle Mountain, NV 89820
JSuthers@BOLTofNevada.com
775-635-8034

February 1, 2003

(Legislator)
Carson City, Nevada 89701

re: Request pursuant to Attorney General's Opinion #02-41

(Legislator):

In response to a request from Colonel Hosmer of the Nevada Highway Patrol, asking for guidance on how to determine compliance with Nevada's mandatory helmet use law, the Attorney General wrote, and filed in November 2002, an Opinion containing the following suggestion (among others):

"The current state of the (mandatory helmet) law makes enforcement and compliance somewhat confusing. Therefore, we suggest that a change to Nevada law be requested to include the following provisions:

- "1. A rider wearing a helmet that does not conform to the law will be subject to a small fine.
- "2. A rider cited a second time for wearing a non-conforming helmet will be subject to a higher fine.
- "3. A rider cited a third time for wearing a non-conforming helmet will be subject to misdemeanor charges.
- "4. Establish a presumption of non-conformance if a helmet lacks either of the two stickers required by 49 C.F.R. § 571.218, which may be rebutted by a showing that the helmet conforms to the standards.
- "5. Establish a presumption of non-conformance if the helmet lacks impact-absorbing material between the shell and the comfort lining of the helmet as required by 49 C.F.R. § 571.218, which may be rebutted by a showing that the helmet conforms to the standards."

This Attorney General's Opinion was ultimately the result of our asking the question of Colonel Hosmer:

"How can a motorcyclist comply, with certainty, with the provisions of Nevada's mandatory helmet law?"

Following issuance of the AG's Opinion, Colonel Hosmer, although still unable to answer our question, explained many of the steps he has taken internally to help solve some of the problems with enforcement. In addition, Colonel Hosmer all but apologized for not being able to bring the matter to the attention of the Legislature this session as suggested, at the same time offering his assurance that if the matter were to be heard, he **"... would be more than happy to testify at any hearing that the current statute is un-workable."**

We believe, and greatly appreciate, that everyone we have contacted so far has done all they can do to correct the problem(s) with the statute. Moreover, we concur with the Attorney General's Opinion insofar as it acknowledges certain problems and suggests a legislative solution, although we retain serious reservations about some of the particulars.

Therefore, we would like to ask, encourage and recommend that you somehow participate in addressing the acknowledged problems with enforcement of, and compliance with, Nevada's "protective headgear" statute – problems resulting in both instant and ongoing violations of the Constitutionally protected rights of motorcyclists living in or passing through the State of Nevada.

Speaking on behalf of BOLT of Nevada and the Helmet Law Defense League, our members and supporters, I hereby formally request that you address the issues raised in the foregoing, and move forward to a fair and just resolution without unnecessary delay. To those ends, we will remain available to provide whatever further assistance as we can provide.

Thank you for your kind attention, and please keep us advised of your progress.

Sincerely,

Jackie Suthers
BOLT of Nevada, Director
Bikers Of Lesser Tolerance, State Director, Nevada
Helmet Law Defense League, State Director, Nevada

cc: Helmet Law Defense League, Bikers Of Lesser Tolerance, Nevada Attorney General, Richard Kirkland, Colonel Hosmer, Jenny Lewis, media, file.