



U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

Record of Commission Action  
Commissioners Voting by Ballot

1111 18th Street, N.W.  
Washington, D.C.

Voting: Chairman King  
Commissioner Franklin  
Commissioner Pittle  
Commissioner Sloan  
Commissioner Zagoria

ITEM

Requested Withdrawal of DeLong Advisory Opinion on Bicycle Pre-emption

(Briefing material transmitted by the Office of the Secretary on December 28, 1978.)

DECISION

In September 1978 the Commission approved an Advisory Opinion to Mr. A. Fred DeLong on possible preemption of state requirements for bicycle lighting. To clarify and supplement the existing Advisory Opinion, the Commission approved the attached revised Opinion, No. 270-A, dated January 16, 1979.

VOTE

Concurring: Chairman King (1-10-79)

*Susan B. King*

Commissioner Franklin (1-16-79)

*Barbara H. Franklin*

Commissioner Pittle (1-8-79)

*R. David Pittle*

Commissioner Sloan (1-8-79)

*Edith B. Sloan*

Commissioner Zagoria (1-8-79)

*Susan Zagoria*

Submitted by the Office of the Secretary



U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D. C. 20207

January 16, 1979

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Mr. A. Fred DeLong  
Technical Editor  
Bicycling Magazine  
Huntingdon at Terwood Rd.  
Hatboro, Pennsylvania 19040

Dear Mr. DeLong:

In a July 4, 1978 letter you raised a question about bicycle preemption. You asked whether the Commission's bicycle regulation would preempt a state requirement for lighting on bicycles ridden at night.

The Commission responded to your question in a September 12, 1978 advisory opinion. The opinion expressed the Commission's belief that the lighting requirement you described would protect bicyclists against at least two risks of injury ((1) inadequate nighttime visibility of bicycles to motorists and (2) obstacles in the road that may not be visible to bicyclists at night). The advisory opinion concluded that such a requirement would not be preempted since the Commission's regulation did not address the second risk of injury.

In an October 19, 1978 letter, the Bicycle Manufacturers Association of America and Schwinn Bicycle Company requested withdrawal of our September 12 advisory opinion to you. While we are not withdrawing that opinion, we believe that further discussion of the question you raised is needed.

Mr. A. Fred DeLong  
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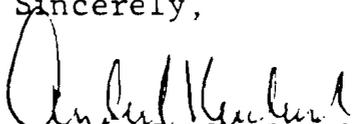
In our September 12 opinion we should have emphasized that the Commission's conclusion was based on the assumption that the state or local bicycle lighting requirement at issue would address a different risk(s) of injury than the one the Commission has addressed. If a state or local requirement addresses only the same risk that the Commission's bicycle regulation addresses (that of inadequate nighttime visibility of bicycles to motorists), the preemption advice in our September 12 advisory opinion would not apply. In addition, our advice does not necessarily apply to any existing state or local requirements or to the Uniform Vehicle Code requirement because we have not analyzed any of those provisions.

Our September 12 opinion should have included some additional discussion about the preemption question that your letter raised. The requirement you described, for lighting on bicycles ridden at night, is clearly one which defines how a consumer must use a bicycle. In contrast, the Commission's regulation sets requirements which a bicycle must meet when introduced into interstate commerce. Because the Commission's regulation does not define how a consumer may or may not use a bicycle, the Commission believes that the Federal Hazardous Substances Act does not prohibit states or localities from issuing or enforcing a requirement that lighting be used on bicycles ridden at night.

Please note that this advice concerning a "use" requirement is based on an assumption. For the purpose of answering your question, we have assumed that the state or local requirement would not have the effect of setting any requirement which a bicycle must meet at the time it enters interstate commerce. In addition, since specific state bicycle lighting "use" requirements can vary, the preemption questions raised by each one should be evaluated on an individual basis.

This advisory opinion clarifies and supplements the one which we issued on September 12, 1978. It has been approved by the Commission.

Sincerely,

  
Andrew S. Krulwich  
General Counsel