

**To: The Honorable Elaine Richardson, Arizona State Senate  
The Honorable Andrew Nichols, Arizona House of Representatives  
The Honorable Carmine Cardamone, Arizona House of  
Representatives**

**January 28, 2000**

**Re: I00-002(R99-  
037)**

### **Question Presented**

Under what circumstances, if any, does Arizona Revised Statutes ("A.R.S.") § 28-704(A), which addresses traveling at such a slow speed that traffic is impeded, apply to the operation of bicycles on roadways?

### **Summary Answer**

Bicyclists traveling slower than the normal speed of traffic on a roadway must comply with A.R.S. § 28-704(A) only if the lane in which the cyclist is riding is too narrow for a bicycle and vehicle to travel safely side by side as described in A.R.S. § 28-815(A)(4).

### **Background**

Arizona law regulating traffic includes one article specifically addressing the operation of bicycles. A.R.S. Title 28, article 11. In this article, A.R.S. § 28-815 addresses where bicyclists moving slower than traffic must ride. Under A.R.S. § 28-815, a bicyclist "riding . . . on a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall ride as close as practicable to the right-hand curb or edge of the roadway."<sup>(1)</sup> See also *Maxwell v. Gossett*, 126 Ariz. 98, 99, 612 P.2d 1061, 1062 (1980) (noting that earlier version of A.R.S. § 28-815 requires that "bicycles . . . be ridden on the right side of the road, or with the traffic"). There are four exceptions to this general rule: (1) if passing another bicycle or vehicle traveling in the same direction; (2) if preparing for a left turn; (3) "if reasonably necessary to avoid conditions, including fixed or moving objects, parked or moving vehicles, bicycles, pedestrians, animals or surface hazards;" or (4) "if the lane in which the person is operating the bicycle is too narrow for a bicycle and a vehicle to travel safely side by side within the lane." A.R.S. § 28-815(A)(1)-(4). Section 28-815, A.R.S., also expressly prohibits bicyclists from riding "more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles." A.R.S. § 28-815(B). Another statute, A.R.S. § 28-812, establishes that bicyclists have "all of the rights" and are "subject to all of the duties" that apply to a driver of a "vehicle" under Title 28, chapters 3 (traffic and vehicle regulation), 4 (driving under the influence), and 5 (penalties and procedures for vehicle violations).<sup>(2)</sup> This statute "generally applies the same traffic laws to riders of bicycles as it does to drivers of motor vehicles." *Maxwell*, 126 Ariz. at 100, 612 P.2d at 1063. The only exceptions to the application of other traffic laws to bicyclists are for "special rules in this article [Article 11] and . . . provisions . . . that by their nature can have no application." A.R.S. § 28-812.

You inquired specifically about the application of A.R.S. § 28-704(A) to bicyclists. This subsection prohibits a person from driving "a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with the law."<sup>(3)</sup> A.R.S. § 28-704(A).

### **Analysis**

Section 28-704, A.R.S., (1) prohibits a motor vehicle from going "at such a slow speed as to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law;" (2) allows the director of the Department of Transportation or local authority to establish a minimum speed limit "below which a person shall not drive a vehicle except when necessary for safe operation or in compliance with law;" and (3) requires a person driving slower than the normal flow of traffic on a two-lane highway where passing is unsafe to pull off the road at the nearest turnout if five or more vehicles are lined up behind the slow-moving vehicle. A.R.S. § 28-704. Section 28-704(A), A.R.S., expressly applies only to motor vehicles, which does not include bicycles. See A.R.S. §§ 28-101(29) (definition of motor vehicle). However, because bicyclists are generally subject to all requirements imposed on other types of vehicles, A.R.S. § 28-704(A) would apply to bicyclists unless "special rules" for bicyclists in Title 28, article 11 apply, or if the provisions of A.R.S. § 28-704 "by their nature can have no application" to bicyclists. See A.R.S. § 28-812.

Section 28-815, A.R.S., is a "special rule" for bicyclists in Title 28, article 11 that establishes where a bicyclist is to ride when traveling "at less than the normal speed of traffic at the time and place and under the conditions then existing." It imposes a duty on bicyclists, subject to some exceptions, to ride "as close as practicable to the right-hand curb or edge of the roadway." A.R.S. § 28-815(A). Because A.R.S. § 28-815 establishes a special rule for bicyclists moving slower than other traffic, bicyclists subject to A.R.S. § 28-815 are not covered by A.R.S. § 28-704, which applies to slow-moving motor vehicles. See A.R.S. § 28-812; see also *City of Phoenix v. Superior Court*, 139 Ariz. 175, 178, 677 P.2d 1283, 1286 (1984) (specific statutory provisions control over general provisions).

However, A.R.S. § 28-815, the statute governing bicyclists moving slower than traffic, exempts bicyclists when, among other things, "the lane . . . is too narrow for a bicycle and a vehicle to travel safely side by side." A.R.S. § 28-815(A)(4) (the "narrow road" exemption). A bicyclist covered by the narrow road exemption is no longer subject to the special rule imposed on bicyclists by A.R.S. § 28-815(A), and no statute in the article governing bicycles (Title 28, article 11) describes the legal responsibilities of the bicyclist under those circumstances. Thus, there is no "special rule" in the "bicyclist article" (article 11) that applies to this situation. Also, the requirements for slow motor vehicles in A.R.S. § 28-704 are not "by their nature" inapplicable to bicyclists. A bicyclist within the "narrow road" exemption from A.R.S. § 28-815 is, therefore, subject to the requirements of A.R.S. § 28-704.<sup>(4)</sup> Applying A.R.S. § 28-704(A) to bicyclists within the narrow road exemption from A.R.S. § 28-815 prohibits the bicyclist in that situation from driving at such a slow speed "as to impede or block the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation or in compliance with law."

### Conclusion

A.R.S. § 28-704(A) only applies to a bicyclist traveling on a roadway slower than the normal speed of traffic when the lane is too narrow for a bicycle and vehicle to travel side by side as described in A.R.S. § 28-815(A)(4). In other circumstances, bicyclists need only comply with the requirements of A.R.S. § 28-815.

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<sup>1</sup> "Traffic" means "pedestrians, ridden or herded animals, vehicles and other conveyances either singly or together while using a highway for purposes of travel." A.R.S. § 28-601(26).

2. A "vehicle" is "a device in, on or by which a person or property is or may be transported or drawn on a public highway, excluding devices moved by human power or used exclusively on stationary rails or tracks." A.R.S. § 28-101(52).

3. A "motor vehicle" means either a self-propelled vehicle or, for the purposes of the laws regarding the motor vehicle fuel tax, "a vehicle that is operated on the highways of this state and that is propelled by the use of motor vehicle fuel." A motor vehicle [d]oes not include a motorized wheelchair or a motorized skateboard. A.R.S. § 28-101(29).

4. In a 1980 Arizona Supreme Court case concerning whether a bicyclist may ride in a crosswalk, Justice Hays noted in a concurring opinion that he was "disturbed" by the lack of clarity regarding the duties of bicyclists. *Maxwell*, 126 Ariz. at 100, 612 P.2d at 1064 (Hays, J. specially concurring). The statutory analysis required to answer the question raised in your opinion request further illustrates the difficulty in this area of law that prompted comments by Justice Hays.

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