



Elevating and Amusement Devices Safety Division	Ref. No.: 510 / 98	Rev. No.:
Information / Interpretation Bulletin	Date: March 29, 1999	Date:

Subject: CRITERIA TO ASCERTAIN WHETHER THE AMUSEMENT DEVICES ACT APPLIES TO GO-KART RACING AND OTHER LIKE ACTIVITIES

Sent to: Go-Kart Industry

This information bulletin responds to the request by Go-kart Industry Stakeholders for criteria to ascertain whether the Amusement Devices Act applies to go-kart racing and other like activities not open to the public.

The Go-kart Industry Stakeholders deferred to TSSA to develop administrative guidelines to use in determining whether a "club" or other organizations are genuinely private and not open to the public, or merely a subterfuge to avoid compliance with the requirements of the Amusement Devices Act.

The following are established factors canvassed by TSSA for the owner/operator to assess what constitutes a facility that is not "open to the public":

1. The organization is selective in its membership and the degree to which the general public is excluded:

Membership is limited. There are membership qualifications. There are age restrictions and/or qualification requirements for membership.

2. There are formal membership procedures:

Prospective members are recommended by an existing member. His/her application is approved by a board of directors or the other members.

3. Membership control over internal governance of the organization:

There are by-laws/memoranda setting out the rules on how decisions are made. The organization carries on a sporting or athletic business exclusively, or in combination with the operation of amusement devices. The organization carries on as a business, or it is not-for-profit in its objects. The local municipality characterizes the organization's status for property tax and licensing purposes as being not open to the public, or as a private sports/athletics facility. The form of governance of the organization is an unincorporated association, not-for-profit corporation, business corporation or co-op.

4. Use of facilities only by members

The facilities are not easily accessible to non-members. Members of the public are not entitled to unrestricted access to the facility; express permission to enter is required of the owner in order to avoid trespassing.

5. Substantiality of dues:

There are substantial dues or other charges. There are annual assessments which cover costs, or user charges.

6. How the organization advertises:

The organization advertises for membership. It does not advertise that its facilities are available for use by non-members, or that it is easy to join the organization. There is no inference in its advertising that a member of the public may easily become a member.

7. Knowledge and nature of risks assumed by the members:

Members are informed of risks and assumption of risks. There are signed consents and waivers of liability.

Not any one or several of these factors alone necessarily determine the issue. All the above factors, and perhaps others, may be taken into consideration. Track owners/operators may consider these factors in the event that they wish to assert that the Amusement Devices Act does not apply to their facilities for reason that their facilities are not businesses "open to the public", complemented by expression of such assertion by the owner/operator, such as a public notice that

THESE FACILITIES ARE NOT OPEN TO THE PUBLIC AND, ACCORDINGLY, ARE NOT LICENSED OR INSPECTED UNDER THE AMUSEMENT DEVICES ACT BY THE TECHNICAL STANDARDS AND SAFETY AUTHORITY - THE MANAGEMENT.

This guideline would permit TSSA to accommodate stakeholders who assert that the Amusement Devices Act does not apply to their facilities, while demonstrating that TSSA is mindful of the scope in application of the Amusement Devices Act.

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