

MOTOR VEHICLES: Courts are not authorized to grant stay of execution on judgment suspending or revoking drivers' licenses.

January 13, 1938

Hon. V.H. Steward
Commissioner of Motor Vehicles
Jefferson City, Missouri



Dear Sir:

This department is in receipt of your letter of December 22, 1937, enclosing a letter from F.C. Lynch, Director of the Kansas City Safety Council, requesting an opinion as follows:

"In the administration of the new drivers' license law, the law confers upon the judge, the power to suspend or revoke licenses.

"We would like to know if it is legal for the judge to issue a stay of execution after he has rendered a decision in a case. We are particularly interested in cases of drivers' license enforcement. The question is - 'the judge finds the driver guilty of reckless driving and sentences him to jail for thirty days and suspends his driver's license for 6 months; is it then legal, after having passed such sentence, for the judge to later place a stay of execution on this sentence, thereby, relieving the driver of serving the sentence and also giving him the opportunity to again drive his car.'"

At the 1937 session of the legislature, there was enacted what is commonly termed the Drivers' License Law, which appears in the Laws of 1937, page 370. Section 17 (a) of this act is as follows:

"Whenever any person is convicted of any offense for which this act makes mandatory the revocation of the operator's, registered operator's or chauffeur's license of such person by the commissioner, the Court in which such conviction is had shall require the surrender to it of all operator's, registered operator's and chauffeur's State licenses, certificates or badges then held by the person so convicted and the court shall thereupon forward the same together with a record of such conviction to the commissioner."

The offenses, a conviction of which makes it mandatory on the part of the commissioner to revoke the driver's license, appear in Section 18 of this act and are as follows:

- "1. Manslaughter (or negligent homicide) resulting from the operation of a motor vehicle;
2. Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug;
3. Any felony in the commission of which a motor vehicle is used."

Section 17 (b) of this act authorizes certain courts to revoke or suspend permits to operate motor vehicles, and is in part as follows:

"Every court having jurisdiction over offenses committed under this act or under the provisions of any statute of this State regulating the operation of motor vehicles on highways, or any felony in the commission of which a motor vehicle is used, shall forward to the commissioner a record of the conviction of any person in said court for a violation of any of said laws, and

every such court, except justice of the peace courts, and courts of criminal correction in the City of St. Louis, shall have the power of suspending or revoking the license of any licensee under this act or the certificates of registered chauffeurs or registered operators under Sections 7765 and 7766, Revised Statutes of Missouri, 1929, and amendments thereto, and shall certify to the commissioner a record of such suspension or revocation."

The balance of this section pertains to the exception made in the above section which we have underlined and is not pertinent here.

Under the above statutes, we see that upon a conviction of the holder of a driver's license of certain offenses, the court is not authorized to revoke or suspend the permit of the licensee, but must send a record of such conviction to the commissioner of motor vehicles, and the commissioner is required to "forthwith revoke the license of any operator, registered operator, or chauffeur" so convicted..

This act, however, provides in Section 17 (b) that the permits of licensees may be suspended or revoked, as the court may deem necessary, upon conviction for violation of the laws regulating the operation of motor vehicles upon the highways.

The question now before us is: May the court upon a conviction for an offense, other than one requiring mandatory revocation, sentence the licensee and suspend or revoke his license and then grant a stay of execution which will have the effect of suspending the judgment of the court as to the suspension or revocation of the driver's license.

Section 3739, R.S. Missouri, 1929, is as follows:

"In case of a conviction for any offense where the punishment has been fixed at a fine or imprisonment

in the county jail, or workhouse, or by both such fine and imprisonment, the court in which any such conviction was had, or the judge thereof in vacation, or any justice of the peace before whom such conviction was had, may, for good cause shown, by order entered of record, or in writing signed by such judge or justice, grant a stay of execution on any such judgment of conviction and sentence thereon for a definite period of time to be fixed by the court, judge or justice granting the same, not to exceed six months, upon the defendant or some person for him entering a recognizance conditioned for his surrendering himself in execution at the time and place fixed by the judgment of such conviction or sentence on a day to be named in such order."

This section authorizes the courts to grant stays of execution in the case of a conviction for any offense where the punishment has been fixed at a fine or imprisonment in the county jail, or workhouse, or by both fine and imprisonment. In other words, these are the only cases in which the court may stay execution. If the punishment fixed for the conviction is other than that which we have underlined, this section does not authorize the court to stay that execution.

It has been held in this state in the leading case *Ex parte Thorberry*, 254 S.W. 1087, 300 Mo. 661, that courts have no power to stay execution of judgments of conviction indefinitely. The section authorizing such stays limits them to six months and the person receiving the stay must enter a recognizance conditioned upon his surrender at the appointed time. A stay of execution granted without recognizance is void. *Ex parte Brown*, 297 S.W. 445. This has been the ruling in a long line of Missouri cases, the citation of which will add nothing to this opinion since the determination of the question here depends upon other grounds.

The question here depends upon the fact of whether or not any stay of execution may be granted to a licensee when his permit to operate a motor vehicle has been revoked or suspended. Section 3739, R.S. Missouri, 1929, restricts stays of execution to being given only in certain cases. This section is remedial. In *State ex rel. American Asphalt Roofing Co. v. Trimble*, 44 S.W. 2nd 1103, l.c. 1105, it is held that:

"The primary rule for the interpretation of statutes is that the legislative intention is to be ascertained by means of the words it has used.' *Grier v. Railways Co.*, 286 Mo. 523, 534, 228 S.W. 454, 457. The courts cannot enlarge and change the scope of statutes. *State ex rel. v. Holtkamp*, 266 Mo. 347, 181 S.W. 1007. A court has no authority to write into a statute a provision not covered by its language. *Stephens v. Gordon*, 266 Mo. 206, 181 S.W. 73; *Orthwein v. Insurance Co.*, 261 Mo. 650, 170 S.W. 885. 'Although the statute may be remedial in its nature, and hence subject to liberal construction, such construction cannot extend beyond its plain terms.' *Braeuel v. Reuther*, 270 Mo. 603, 193 S.W. 283."

The letter of Section 3739, supra, provides a stay of execution in those cases only in which there has been a conviction and the punishment fixed at a fine or imprisonment in the county jail or workhouse, or both, and we cannot write into a statute a different punishment not covered by its language which may be stayed by the court. The words and meaning of Section 3739, supra, are clear and intelligibly describe in what instance a stay of execution may be granted, the length of said stay and the conditions thereof and this section cannot be construed to permit a court to do that which is not clearly authorized.

The revoking or suspending of a driver's permit to operate a motor vehicle is not the punishment which the court is authorized to suspend by a stay of execution under Section 3739, supra, and as such, may not be stayed.

CONCLUSION

Therefore, it is the opinion of this department that a stay of execution may be granted only in those cases where the punishment for the offense has been fixed at a fine or imprisonment in the county jail or workhouse, or by both such fine and imprisonment. That said stay must be for a definite period fixed by the court, not to exceed six months, upon a recognizance to be given by the person conditioned for his surrendering himself at the appointed time for the execution of the judgment. That the court is not authorized to grant a stay of execution upon a judgment revoking or suspending an operator's license or the certificates of registered operators or chauffeurs.

Respectfully submitted,

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APPROVED by:

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