

MOTOR VEHICLES:)
 DRIVERS' LICENSES:)
 REVOCATION OF:)
 SENATE BILL NO. 251:)
 68th GENERAL ASSEMBLY:)

1) "Receiving a Record", of an operator's or chauffeur's conviction in a circuit or magistrate court as used in Sec. 302.271, Senate Bill No. 251, 68th General Assembly, has reference to final judgment entered of record in said court convicting defendant of an offense referred to in section, for which it is mandatory duty of the trial court to revoke the license of said defendant. 2) One convicted of any offense under provisions of Section 302.271, and judgment final, magistrate judge can revoke driver's license of convicted defendant but not for any specified period of time. 3) One convicted in magistrate court of careless and imprudent driving of a motor vehicle, and evidence conclusively shows defendant to be under influence of intoxicating liquor at the time offense is alleged to have occurred, magistrate court cannot revoke driver's license under Subsection 2, Section 302.271, Senate Bill 251, authorizing revocation of driver's license upon conviction of one driving a motor vehicle while he is under the influence of intoxicating liquor or a narcotic drug.

August 19, 1955

Honorable Harold W. Barrick
 Prosecuting Attorney
 Pettis County
 Sedalia, Missouri



Dear Sir:

This department is in receipt of your recent request for a legal opinion, reading as follows:

"At the request of the Magistrate Judge of Pettis County, I propound the following questions to your office and request an official opinion on these questions for the Magistrate. The questions are as follows:

"1. In Senate Bill No. 251, Section 302.271, what does the word "receiving a record" mean?

"2. Question: 'A driver's license in Missouri is granted for a period of three years.' Assume that the defendant has been granted a license to drive an automobile in Missouri and after thirty days he is convicted under Senate Bill No. 251, Section 302.271, and his driver's license is revoked, by the Magistrate. Is it mandatory to revoke said defendant's license until it expires, i.e., for two years and eleven months?

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"3. Senate Bill No. 251, Section 302.271. Assume that the defendant is charged in the Magistrate Court for careless and imprudent driving, in that he did allow his motor vehicle to weave back and forth on the highway, etc. The evidence adduced at the trial showed conclusively that the defendant was under the influence of intoxicating liquor at the time. Under this Section and these facts, does the Magistrate Court have jurisdiction to revoke the defendant's driver's license under Sub-Section 2 of this Section, 'driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug', and is it mandatory to revoke said license?

"Thank you very much for your help and assistance in this matter."

Section 302.271, Senate Bill No. 251, 68th General Assembly repealed Section 302.271, and certain other sections of the RSMo Cumulative Supplement 1953, relating to operator's and chauffeur's licenses and enacted seven new sections relating to the same subject. This bill has passed both houses of the Legislature and will become effective August 29, 1955. Section 302.271 of the bill reads as follows:

"302.271. The director, circuit judge or magistrate shall forthwith revoke the license of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction in any circuit or magistrate court of any of the following offenses, when such conviction has become final:

"(1) Manslaughter resulting from the operation of a motor vehicle:

"(2) Driving a motor vehicle under the influence of intoxicating liquor or a narcotic drug:

"(3) Any felony in the commission of which a motor vehicle is used:

"(4) Leaving the scene of an accident knowing that injury has been caused to a person

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or damage has been caused to property without stopping and giving his name, residence, including city and street number, to the injured party, or to a police officer, or to other proper person, as required by law;

"(5) Perjury or the making of a false affidavit to the department of revenue under this chapter or under any other law relating to the ownership or operation of motor vehicles;

"(6) Conviction or forfeiture of bail not vacated, upon three charges of careless or reckless driving committed within a period of two years:

"(7) Any offenses involving the careless and reckless operation of a motor vehicle which has resulted in the death of another."

The first inquiry requests an explanation of the words, "receiving a record" as they are used in the above quoted section. No definition of said terms are given in the section, and in order to ascertain the intended meaning of same we must look to other parts of Chapter 302, RSMo 1949, and possibly other sources. All applicable portions of the chapter must be read and construed along with Section 302.271, in arriving at the intended meaning of the words "receiving a record of conviction."

Ordinarily the term "record of conviction" refers to a written record of the court proceeding showing one has been convicted of a criminal offense of which he stands charged, and that he has been sentenced and judgment rendered against him by the court, in accordance with the applicable criminal statutes of the state in which the court has been granted jurisdiction in such case.

Court records of this nature, assuming they have been kept in the manner provided by Missouri statutes, are authentic histories of the proceedings they recite, and if properly certified to by the clerk of the court, shall be received as evidence of the acts or proceedings of such court, in any court in this state, as provided by Section 490.130 RSMo 1949.

In commenting upon the meaning of the term "record of conviction" as in the case of *Commonwealth v. Minnick*, reported in 250 Pa. 363, the Supreme Court of Pennsylvania said at l.c. 367:

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"'Record of conviction' is a common law term; it follows that it is both legal and technical. Why then shall it not have its legal technical meaning imputed to it when we find it employed in a rule relating to a subject matter as to which it has acquired such meaning? Rules of construction require such meaning to be given technical terms when they appear in enactments, whether civil or criminal in their character, except where a contrary intent is disclosed. * * *"

"* * * When the law speaks of conviction, it means a judgment and not merely a verdict which in common parlance is called a conviction.' * * *"

From that part of the court's opinion quoted above we understand the record of conviction of a defendant must show either a plea of guilty, or a verdict of guilty by a jury, convicting defendant of the formal criminal charge alleged against him, and the judgment of the court based upon the plea or verdict.

In the instant case, the record of conviction would be the original court record showing the defendant has plead guilty, or has been found guilty, by a jury at a trial in the court having jurisdiction, of any one of the seven criminal offenses mentioned in Subsection 1 to 7, Section 302.271, supra, alleged against him.

From the reading of Section 302.271 it is obviously the legislative intent that in these instances when a defendant is convicted of any of the offenses mentioned therein, the judgment is entered of record and has become final, that it shall be the mandatory duty of the trial court to forthwith revoke the defendant's license.

It further appears to be the legislative intent as expressed in Section 302.225, RSMo Cumulative Supplement 1953, that the trial court shall furnish the director of revenue with a "record of conviction" of the defendant in such court. Said section reads as follows:

"1. Whenever any person is convicted of any offense or of the last of a series of three offenses for which this chapter makes mandatory the revocation of the operator's

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or chauffeur's license of such person by the director, the circuit court or magistrate court in which such conviction is had shall require the surrender to it of all operator's and chauffeur's licenses, then held by the person so convicted, and the court shall within ten days thereafter forward the same, together with a record of such convictions to the director.

"2. Every court having jurisdiction over offenses committed under this chapter, or any other law of this state or municipal ordinance regulating the operation of vehicles on highways shall within ten days thereafter forward to the director upon forms to be furnished by the director a record of the conviction of any person in said court for a violation of any of said laws or ordinances other than nonmoving traffic violations, together with the record of any action taken by the court in suspending or revoking the license of such person.

"3. No municipal court or municipal official shall have power to revoke any operator's license or chauffeur's license; but, in addition to all other jurisdiction heretofore given by law, the municipal court of any city of this state which now has or which may hereafter have more than three hundred thousand inhabitants shall have power and jurisdiction to suspend the license of any operator or chauffeur to operate a motor vehicle within the corporate limits of the municipality in which such offense was committed and where such municipal court otherwise has jurisdiction, for a period of not to exceed three months; such suspension shall be ordered only for any of the causes given in sections 302.271 and 302.281 authorizing revocation and suspension of licenses by the director.

"4. The magistrate courts of each county and the circuit courts of the various counties of this state shall have power to suspend for the causes herein provided for a period not to exceed one year the license of any operator or chauffeur to operate a motor vehicle within

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the entire state, and any circuit court or magistrate court may revoke for the causes herein provided the license of any such operator or chauffeur to operate a motor vehicle within this state, whether the case is on appeal or has originated in such court.

"5. Whenever any person is convicted of any offense in connection with which the court trying the person charged with the offense orders the suspension of the license of any operator or chauffeur to operate a motor vehicle, the court shall note the fact on the back of the license that the holder's right to drive a motor vehicle in such jurisdiction has been suspended for the period stated.

"6. Every court or municipal official trying any person charged with violations of this law or of any city motor vehicle traffic ordinance in determining the penalty may take into consideration prior convictions of all violations of state motor vehicle traffic laws or county or municipal traffic ordinances of any such person and the abbreviated record of such convictions appearing on the back of his license shall be deemed prima facie proof thereof."

From Subsection 1 of this section we note that the circuit or magistrate court in which a defendant is convicted of any offense, or a series of three offenses, for which the chapter makes mandatory the revocation of defendant's operator's or chauffeur's license and that the trial court order the surrender of the revoked license within ten days thereafter, the court shall forward such license to the director of revenue together with a record of conviction.

No explanation of the record of conviction is given here although it is more particularly described in Subsection 2, of the same section.

Subsection 2 of said section states that the courts having jurisdiction over the offenses committed under the chapter, any other state law, or municipal ordinance regulating the operation of motor vehicles upon the highways, shall within

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ten days thereafter forward to the director of revenue a record of conviction of any person for any such violation, together with a record of any action taken by the court in the suspension or revocation of the operator's or chauffeur's license of the convicted person. The record of conviction referred to here is required to be shown upon forms furnished by the director of revenue and, when completed, such forms must be returned to the director by the trial court.

Apparently the forms to be completed and returned to the director of revenue are for the convenience of the director in keeping his records and in performing the duties imposed upon him by statute. In the event the trial court has not been supplied with blank forms it is believed that such court might properly send the director a certified copy of the court record showing the conviction of the defendant, within ten days of such conviction, and that his action in so doing would be a sufficient compliance with the provisions of Section 302.225, supra.

In answer to the first inquiry it is our thought that when a defendant is convicted of any one of the seven offenses mentioned in Section 302.271, Senate Bill No. 251, supra, in a circuit or magistrate court, said judgment is entered of record and has become final, the operator's or chauffeur's license of the convicted defendant shall forthwith be revoked by said court. That when such judgment has been duly entered of record, the trial court will then be "receiving a record" of such conviction within the meaning of the terms as used in Section 302.271, supra.

Your second inquiry states that operator's and chauffeur's licenses are issued for a period of three years. You assume a case in which the defendant was convicted of an offense under the provisions of Senate Bill No. 251, for which his operator's or chauffeur's license must be revoked, and then inquire if the revocation shall be for the unexpired period for which the license was in effect at the time of the conviction, or two years and eleven months.

Section 302.271, supra, or any other section of the statutes does not provide that upon revocation of an operator's or chauffeur's license by a circuit or magistrate judge, that the order of revocation shall specify the date when the revocation is to begin and when it is to end, or that such revocation shall continue for any particular length of time.

The General Assembly has not seen fit to enact any laws of this nature, and until it does so, it is our thought that a trial

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circuit, or magistrate judge is unauthorized to revoke a convicted defendant's operator's or chauffeur's license for any certain period of time. Said court has power, and under such circumstances shall revoke such a defendant's license, but shall not place a time limit on the revocation.

Our answer to your second inquiry is, that the trial circuit, or magistrate judge shall revoke the convicted defendant's license, but cannot revoke it for two years and eleven months, or for any other specified period of time.

The third inquiry assumes that one is on trial in magistrate court for the charge of careless and imprudent driving of a motor vehicle and it is conclusively shown by the evidence that at the time the offense is alleged to have been committed the defendant was under the influence of intoxicating liquor. The inquiry is whether or not under these circumstances the trial magistrate has jurisdiction to revoke the defendant's operator's or chauffeur's license under the provisions of Subsection 2, Section 302.271, Senate Bill No. 251. In effect the subsection requires the director of revenue, any circuit, or magistrate judge, to revoke the license of one convicted of driving a motor vehicle while he is under the influence of intoxicating liquor or a narcotic drug.

From the facts related in the third inquiry, it appears that the defendant had been charged with the criminal offense of driving a motor vehicle in a careless and imprudent manner, and was on trial for that offense. It does not appear that the defendant was convicted, but for the purpose of our discussion it will be assumed that he was convicted, and that the judgment rendered against him has become final.

Under these circumstances the trial court would lack the power to revoke the license of the defendant, since the defendant has not been convicted of any offense mentioned in Section 302.271, or in any other portion of Chapter 302, RSMo 1949, for which his license could be revoked. In an opinion of this department rendered to Honorable M. E. Morris, Director of Revenue, upon September 22, 1954, it was held that the director was unauthorized to suspend or revoke the operator's or chauffeur's license of one convicted of careless and reckless driving. We enclose a copy of that opinion for your convenience.

Again, in view of the facts mentioned in the third inquiry that defendant had been charged, tried and convicted of the offense of driving a motor vehicle in a careless and imprudent manner and had not been convicted of driving a motor vehicle while he was

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under the influence of intoxicating liquor or a narcotic drug, the director of revenue, any circuit court, the trial magistrate or any other magistrate judge would be legally unauthorized and would lack the power to revoke the operator's or chauffeur's license of the defendant. The magistrate referred to could not revoke the defendant's license for still another and more important reason. Driving a motor vehicle while one is under the influence of intoxicating liquor is a felony, and magistrate courts have never been granted jurisdiction to try felony cases in Missouri.

In point with our reasoning given in the preceding paragraph is an opinion of this department rendered to the Honorable John M. Cave, Prosecuting Attorney of Callaway County, upon October 16, 1952. The opinion held that the circuit and not the magistrate court had jurisdiction to try one for driving a motor vehicle while he was under the influence of intoxicating liquor, which charge is a felony, and that the magistrate court could not revoke the defendant's license under these conditions. A copy of that opinion is enclosed for your consideration.

In answer to the last inquiry, it is our thought for the reasons given above, that the trial magistrate referred to in such inquiry, lacks the power and cannot revoke the operator's or chauffeur's license of the defendant.

CONCLUSION

It is the opinion of this department that:

1) The term "receiving a record" of an operator's or chauffeur's conviction in a circuit or magistrate court as used in Section 302.271, Senate Bill No. 251, 68th General Assembly, which will become effective on August 29, 1955, has reference to the final judgment entered of record in said court convicting a defendant of any one of the offenses referred to in said section, for which it is the mandatory duty of the trial court to revoke the operator's or chauffeur's license of said convicted defendant.

2) When one is convicted of any criminal offense under the provisions of Section 302.271, Senate Bill No. 251, the judgment has become final, and for which the convicted defendant's operator's or chauffeur's license shall be revoked,

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a magistrate judge has the power to revoke the defendant's un-revoked license, but cannot revoke same for any specified period of time.

3) When one is convicted of driving a motor vehicle in a careless and imprudent manner in a magistrate court, the judgment has become final and during the trial the evidence conclusively showed the defendant was under the influence of intoxicating liquor at the time the offense alleged against him occurred, the trial court lacks the power and cannot revoke defendant's operator's or chauffeur's license under provisions of Subsection 2, Section 302.271, Senate Bill No. 251, authorizing revocation of the license of one convicted of driving a motor vehicle while he was under the influence of intoxicating liquor or a narcotic drug.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Paul N. Chitwood.

Yours very truly,

John M. Dalton
Attorney General

Enclosures - John M. Cave
10-16-52

M. E. Morris
9-22-54

PNC:ma,vlw