

MOTOR VEHICLE:  
DRIVER'S LICENSE:  
CONVICTION:

A driver's license may not be revoked or suspended for one conviction of careless and reckless driving although party may have been guilty of careless and reckless driving resulting in the death of another.

May 31, 1956



Honorable J. Whitfield Moody  
Prosecuting Attorney  
Daviness County  
Gallatin, Missouri

Dear Mr. Moody:

Reference is made to your request for an official opinion of this department reading as follows:

"I would appreciate your opinion concerning the application of Missouri Statutes sections 302.271 and 302.281, Laws of 1951, and as revised in 1955. The facts and circumstances are as follows:

"The accused is charged by information of 'careless, reckless and imprudent driving' of a motor vehicle in such a manner as to endanger the lives and property of others and as a result thereof caused the death of three persons, the charge being based on Section 304.010 Revised Statutes of Missouri 1949. The offense occurred on December 30, 1954.

"Section 302.271(7) Laws of 1951 provides for the revocation, and section 302.281(1) Laws of 1951 provides for a suspension of the driver's license of a person upon conviction of any offense involving wanton and reckless operation of a motor vehicle which has resulted in the death of another.

"Question 1: May a person convicted of careless, reckless and imprudent driving under section 304.010 Missouri Revised Statutes, 1949, have his driver's license revoked under section 302.271(7) or suspended under section 302.281(1) Laws of Missouri, 1951, when the latter sections include the word wanton and reckless operation of a motor vehicle?

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"Question 2: Do sections 302.271(7) and 302.281(1) Laws of Missouri, 1955, which became effective August 29, 1955, allow revocation or suspension of a driver's license upon conviction of careless, reckless and imprudent driving under section 304.010 where a person was killed when the offense was committed prior to August 29, 1955, but the conviction was not until after that date?"

Further reference is made to your letter of March 27, 1956, as follows:

"I have reviewed your letter of March 21st and the enclosed opinion and it is my understanding that it is impossible to revoke a person's drivers license under Section 302.271(7) or suspend them under Section 203.281(1), Laws of Missouri 1951 under a charge of Careless and Reckless Driving.

"This answers question one of my letter of March 9th, and as you stated in your letter the major question now becomes whether or not a person convicted of Careless and Reckless Driving can have his license revoked or suspended by reason of such conviction under Section 302.271(7) and 302.281(1), Laws of Missouri 1955, when the offense occurred before the effective date of the present law, and the conviction was after the effective date."

Prior to the enactment by the General Assembly of the present Sections 302.271 and 302.281, Cum. Supp. 1955, there was in effect in regard to careless driving Section 302.270, Laws of Missouri 1951, p. 79 at 688 and Section 302.280, Laws of Missouri 1951, p. 79, at 688. These sections were as follows:

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

- (1) Manslaughter resulting from the operation of a motor vehicle;

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(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 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 wanton and reckless operation of a motor vehicle which has resulted in the death of another."

"Section 302.280. The director shall suspend the license of an operator or chauffeur for a period of not to exceed one year, upon a showing by the records of the director or any public records that the operator or chauffeur

(1) Has caused the death or personal injury of another or serious property damage by his wanton and reckless operation of a motor vehicle;

(2) Is an habitual reckless or negligent driver of a motor vehicle;

(3) Is an habitual violator of traffic laws;

(4) Had been convicted by a magistrate or circuit court of unlawful or fraudulent use of such license;

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"2. The director shall suspend the license of any operator or chauffeur upon a showing by the records of the director or any public records that such operator or chauffeur has an unsatisfied judgment against him, as defined in chapter 303, RSMo 1949, until such judgment has been satisfied or the financial responsibility of such person, as defined in section 303.120, RSMo 1949, has been established."

In 1955, effective August 29, 1955, the above sections were repealed and the following sections were enacted, Section 302.271, 1955 Cum. Supp., as follows:

"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 person 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;

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

And Section 302.281, Cum. Supp. 1955, as follows:

"The director, circuit judge or magistrate shall suspend the license of an operator or chauffeur for a period of not to exceed one year, upon a showing by the records of the director or any public records that the operator or chauffeur;

(1) Has caused the death or personal injury of another or serious property damage by his careless and reckless operation of a motor vehicle;

(2) Is an habitual reckless or negligent driver of a motor vehicle;

(3) Is an habitual violator of traffic laws;

(4) Had been convicted by a magistrate or circuit court of unlawful or fraudulent use of such license.

"2. The director shall suspend the license of any operator or chauffeur upon a showing by the records of the director or any public records that such operator or chauffeur has an unsatisfied judgment against him, as defined in chapter 303, RSMo, until such judgment has been satisfied or the financial responsibility of such person, as defined in section 303.120, RSMo, has been established."

Upon examination and analysis of the two sets of sections set forth in the foregoing, it may be noted that the major deviation from the old sections (1951) to the new, (1955), is found in the words "wanton and reckless" which have now been replaced by the words "careless and reckless."

An opinion to Honorable M. E. Morris, September 22, 1954, is enclosed herewith. That opinion is to the effect that under Section 302.270 of 1951, there could be no revocation for the conviction of careless driving only. It is pointed out in that opinion that:

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"Neither the 'wanton and reckless operation of a motor vehicle, which has resulted in the death of another' as set forth in Subsection (7) of said Section 302.271, nor the 'wanton and reckless operation of a motor vehicle' as set forth in Subsection (1) of said Section 302.281, are defined or made criminal offenses by the statutes of this state. The power to define and pronounce any act upon the part of any person to be a criminal offense is vested solely in the legislative branch of the state government. \* \* \*"

The opinion said further that in setting forth what constitutes a criminal act, a statute must set forth the facts constituting the crime with such certainty that the defendant may have notice of what he is called upon to meet and controvert and that the court, applying the law to the facts charged, may say that an offense has been committed.

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In State vs. Reynolds, 274 S.W./514, at l.c. 516, the Springfield Court of Appeals quoting from State vs. Ball, 171 S.W. 2d 787, stated as follows:

"Such charges of "careless" and "imprudent" operation of his car on the part of defendant, coupled with the allegation of the facts as to the manner of such careless and imprudent operation, charged conduct which was obviously contrary to and in violation of the statute, Section 8383, supra, and it constitutes a penal offense when considered in connection with the allegations of violation of Section 8385(b), supra. Punishment for said unlawful conduct is not provided for elsewhere in the laws governing motor vehicles, and, therefore, it comes within Section 8404(d) \* \* \*. (Italics ours.)"

In State vs. Ball, 171 S.W. 2d 787, wherein defendant was charged in an information with operating a motor vehicle "\* \* \* while his mental facilities were slowed and dimmed by reason of his having consumed intoxicating liquor," a motion to strike was sustained by the trial court as to that phrase, l.c. 789. The appellate court made no comment as to the propriety of the action of the lower court. The foregoing cases are cited to show that in order to be suspended for a violation under the driver's license law, there must be a trial and conviction of the offenses stated under that law. Of course, under Section 302.281, Cum. Supp. 1955, subsection (2) and 302.010, subsection (7), an habitual careless and negligent driver is one who has been found

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guilty at least two times within two years of careless and reckless driving. From the context, it is not believed that the appellate courts will uphold the revocation of a driver's license for causing the death of another by careless and reckless operation of a motor vehicle or the suspension under Section 302.281 for that offense, no record of a conviction of such a violation of the criminal code of Missouri being obtainable.

Manslaughter, as outlined in subsection (1), Section 302.271, supra, is an entirely different offense since it involves "culpable negligence." State vs. Millin, 300 S.W. 2d 694, 697.

An offender must be charged with a final judgment of having done those things that are denounced by the statute in order to properly have his operator's license suspended or revoked. Under the facts gleaned from your opinion request, it is fairly evident that prosecution and conviction in the case mentioned for manslaughter is possible. It is felt that, through the repeal and re-enactment, the driver's license law in regard to manslaughter, was left intact. The retrospective effect of the new law in regard to manslaughter cannot be brought into question because the new law amounts to a re-enactment of the former law. Section 1.120, RSMo 1949, is as follows:

"The provisions of any law or statute which is re-enacted, amended or revised, so far as they are the same as those of prior laws, shall be construed as a continuation of such laws and not as new enactments."

#### CONCLUSION

It is the opinion of this office that a driver's license may not be revoked in accordance with Section 302.271, Cum. Supp. 1955, or suspended in accordance with Section 302.281, Cum. Supp. 1955, for one conviction of careless and reckless driving although the party may have been guilty of careless and reckless driving resulting in the death of another.

The foregoing opinion, which I hereby approve, was prepared by my assistant, James W. Paris.

Yours very truly,

JOHN M. DALTON  
Attorney General

JWF/bi