DRIVER'S LICENSE:
INTOXICATION TEST:

A. The refusal of a resident of Missouri to submit to an intoxication test does not constitute a ground for revocation of his driver's license in this state.
B. The driver's license of a resident of Missouri cannot be revoked if he is acquitted in another state of an offense committed in another state.

Opinion No. 173 - 1962

June 5, 1962

Honorable Dwight Beals
Representative, Jackson County
603 Commerce Building
Kansas City 6, Missouri

Dear Mr. Beals:

In your letter of April 3, 1962, in which you enclose a clipping taken from the Kansas City Star of March 30, 1962, you submit the following questions:

> "If a Missouri resident, who has a Missouri driver's license, is arrested in Kansas of the offense that may involve intoxication and refuses to take a test for intoxication, and his driver's license is revoked for that reason and later he is acquitted on a drunken driving charge, will his Missouri license be revoked (a) when such a refusal is made, (b) and will it remain revoked if he is acquitted of drunken driving?"

According to the newspaper clipping you submit, the law of Kansas requires the consent of the driver of a motor vehicle to submit to a chemical test to determine possible intoxication, but if he refuses to consent the penalty is revocation of his driver's license. The Attorney General of Kansas, according to the newspaper clipping, has ruled that an acquittal of a charge of driving while intoxicated does not restore the driver's license which was revoked because the driver refused to submit to the intoxication test.

In Ex Parte Kneedler, 243 Mo. 632, 147 S.W. 983, l.c. 985, the Supreme Court of this state stated:

> "Every person who operates or uses a motor vehicle must be regarded as exercising a privilege, and not an unrestricted right. It being a privilege granted by the legislature, a person enjoying such privilege must take it subject to all proper restrictions."

Thus the privilege of operating a motor vehicle in this state is governed by legislative enactment. The statute providing for the qualifications of applicants, the issuance of licenses, and revocation or suspension of licenses is found in Chapter 302, RSMo 1959, as amended in the 1961 cumulative supplement.

Section 302.160, RSMo 1959, provides:

> "The director of revenue is authorized to suspend or revoke the license of any resident of this state upon receiving notice of the conviction of such person in another state of an offense therein which, if committed in this state, would be grounds for the suspension or revocation of the license of an operator or chauffeur."

Under this section the Director of Revenue in this state is authorized to revoke or suspend the license of a resident of this state when said licensee is convicted in another state of an offense which, if committed in this state, would be grounds for suspension or revocation in this state.

The law in this state does not require a motor vehicle licensee to submit to a test for intoxication. Likewise the refusal to submit to such a test is not a ground for revocation in this state. Therefore, a refusal to submit to such a test in another state, even though it is a ground for revocation in that state, does not constitute a ground for revocation in this state.

As to the second question you submit, Section 302.160, supra, requires a conviction in the other state of an offense which if committed in this state would be grounds for revocation in this state. Under this statute the person must be convicted. Therefore, the driver's license of a resident of this state cannot be revoked in this state when the driver is acquitted of an offense committed in another state.

CONCLUSION

It is our opinion that:

A. The refusal of a resident of Missouri to submit to an intoxication test does not constitute a ground for revocation of his driver's license in this state;

B. The driver's license of a resident of Missouri cannot be revoked if he is acquitted in another state of an offense committed in another state.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Moody Mansur.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

MM:BJ