

POINT SYSTEM:
DRIVER'S LICENSE:
DRIVING WHILE INTOXICATED:
FELONY:
CRIMINAL LAW
MOTOR VEHICLES:

Under Section 302.302.(7), RSMo Cum. Supp. 1961, 12 points may be assessed only in those cases where an individual has been convicted of driving under influence of intoxicating liquors in violation of Sections 564.420, 564.430 and 564.440, RSMo 1959.

June 14, 1963

OPINION NO. 10

Honorable John K. Leopard
Prosecuting Attorney
Davless County
Gallatin, Missouri



Dear Mr. Leopard:

This is in reply to your opinion request in which you state:

"I have been requested by the Magistrate of this county to write to your office for an opinion concerning the interpretation of Section 302.302 (1) (7), Laws 1961. This section requires the assessment of points after convictions of traffic violations, and the applicable part reads as follows:

"(7) Driving under the influence of intoxicating liquor or narcotic drugs in violation of state law.....12 points"

"The specific question on which the opinion is requested is as follows: Whether or not such provision requires a conviction of a felony under Section 564.440 before 12 points may be assessed, or whether or not such 12 points may be assessed on a conviction of careless and imprudent driving or on a conviction of any other moving traffic violation where the evidence shows the defendant to have been driving under the influence of intoxicating liquor.

"Section 302.302, supra, requires that the defendant be driving 'under the influence

of intoxicating liquor,' while Section 564.440 requires that the defendant be operating a motor vehicle 'while in an intoxicated condition.' It would appear that a person could be 'under the influence' and yet not be 'in an intoxicated condition,' and that is the reason why your opinion is requested."

Section 302.302, RSMo 1961 Cumulative Supplement, states in part:

"1. The director of revenue shall put into effect a point system for the suspension and revocation of chauffeurs' and operators' licenses. Points shall be assessed only after a conviction or forfeiture of collateral. The initial point value is as follows:

* * * * *

"(7) Driving under the influence of intoxicating liquor or narcotic drugs
In violation of state law....12 points
In violation of a county or municipal ordinance.....6 points".

This section specifically provides that twelve points be assessed for the violation of state law and six points for the violation of a county or municipal ordinance of driving under the influence of intoxicating liquor.

Section 302.302 does not create a new criminal offense but designates points to be assessed for violations of other statutes.

The language of this section clearly indicates that the legislature intended these respective points to be assessed upon conviction of a particular offense, to-wit: driving a vehicle while under the influence of intoxicating liquor.

The only state statutes regarding this particular type of offense to be found in the Missouri statutes are Sections 564.420, 564.430, and 564.440, RSMo 1959, which state:

564.420 - "Every person who, whilst actually employed in driving any stage,

coach, wagon, omnibus, hack or other vehicle, shall be intoxicated to such a degree as to endanger the safety of any person therein, shall be deemed guilty of a misdemeanor, and shall upon conviction be punished by fine not less than twenty nor more than one hundred dollars."

564.430 - "Every person who, whilst actually employed in discharging the duties of a pilot or engineer on any steamboat, or of an engineer or conductor on any railroad engine, car or train of cars, or of a motorman or conductor on any electric car or car moved or propelled by any other power, shall be intoxicated, shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding three years or in the county jail not exceeding one year, or by fine not exceeding one thousand dollars."

564.440 - " No person shall operate a motor vehicle while in an intoxicated condition, or when under the influence of drugs."

A review of Section 302.302, RSMo 1961 Cumulative Supplement, discloses that the legislature enumerated the points to be assessed by the Director of Revenue against an individual driver who had been convicted of certain specific offenses.

Because of the specificity of the offenses listed in said section, and the fact that the section differentiated in the amount of points to be assessed for a conviction of state and county or municipal violations of the particular offense of "driving under the influence of intoxicating liquor or narcotic drugs," the legislature must necessarily have had in mind the convictions under Sections 564.420, 564.430 or 564.440, RSMo 1959.

In addition, authority is to be found which provides that the phrase "under the influence of intoxicating liquor" and "in an intoxicated condition" are substantially synonymous.

In *State v. Dudley*, 159 La. 872, 106 So. 364, the Louisiana court, in holding that the term "under the influence of intoxicating liquor" contained in a city ordinance making it unlawful to drive a motor vehicle upon the streets while under the influence of intoxicating liquor was exactly synonymous with the term "in an intoxicated condition" used in a state statute of similar design, stated:

"And we are of the opinion that the term 'under the influence of liquor' has a well-recognized meaning with every one, which is exactly synonymous with the term 'in an intoxicated condition'."

In *Holley v. State*, 25 Ala. App. 260, 144 So. 535, the Alabama Court of Appeals affirmed a conviction notwithstanding the fact that the affidavit filed in common pleas court charged defendant with driving an automobile "while intoxicated," whereas the information filed on appeal in the circuit court charged the defendant with driving a vehicle on the highway while "being under influence of intoxicating liquors."

In stating that there was no variance between the terms, the Court stated:

"The argument is made that there is a material substantial difference between 'being under the influence of intoxicating liquors' and 'being intoxicated'. The difference is that of 'Tweedle dee and Tweedle dum'. If a man is under the influence of intoxicating liquors, he is intoxicated, and, if he is intoxicated within the meaning of this statute, he is under the influence of intoxicating liquor."

CONCLUSION

In order to assess twelve points for a conviction of "driving under the influence of intoxicating liquor or narcotic drugs" in violation of state statutes as provided

Honorable John K. Leopard - 5

in Section 302.302, RSMo 1961 Cumulative Supplement, one must be convicted under Sections 564.420, 564.430 or 564.440, RSMo 1959.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, George W. Draper, II.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

GD:bj-df