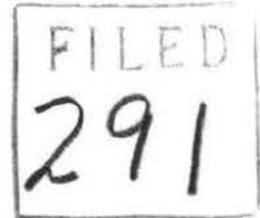


HARDSHIP DRIVING PRIVILEGE: Circuit court granting limited
MOTOR VEHICLES: driving privilege may amend or
DRIVERS LICENSES: modify order at any time. Person
CIRCUIT JUDGE: operating car contrary to limited
CRIMINAL LAW: driving privilege order subject to
PROSECUTING ATTORNEY: criminal charge. Conviction of
charge of operating contrary to
limited driving order is basis for
revocation of order by court granting
such order.

OPINION NO. 291

December 8, 1964



Honorable Rolin T. Boulware
Prosecuting Attorney
Shelby County
Shelbyville, Missouri

Dear Mr. Boulware:

We have your request for an opinion of this office on certain questions relating to limited driving privileges.

The facts on which your questions are based are as follows:

A resident of Shelby County was convicted of driving while intoxicated. The defendant was sentenced to ninety days in the county jail and his driver's license was revoked. After serving part of the sentence he was paroled. Thereafter he made application to the Circuit Court of Shelby County for the limited privilege of operating a motor vehicle in connection with his employment and for the additional limited privilege of driving his own automobile to and from work. By an order of the Circuit Court the application for limited driving privileges was granted ". . . for the period stated in the suspension notice from the Department of Revenue, unless hereafter revoked because of violation of the laws by petitioner after the date of this order." The order was also conditioned on the petitioner's obtaining liability insurance on his automobile.

Less than a month after the order was issued the petitioner was arrested for being intoxicated, his parole was revoked, and he was confined to jail to serve the remainder of his sentence. He

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also advised the sheriff that on two occasions he had driven his automobile to places other than his place of employment. Petitioner has not secured liability insurance on his automobile.

Your first inquiry is whether the Circuit Court of Shelby County had jurisdiction to issue the order granting limited driving privileges. The Circuit Court did have such jurisdiction. Enclosed is a copy of an opinion of this office to the Honorable Bill Davenport, dated April 2, 1962, and a copy of a letter opinion to Honorable M. E. Morris, dated February 4, 1964, both holding that the Circuit Court of the county of residence of the petitioner has jurisdiction to grant such a privilege.

Your next question may be restated as follows:

Does the Circuit Court of Shelby County have the power to revoke the order granting limited driving privileges and, if so, what procedure should be employed?

In 1961 the General Assembly passed Section 302.309 (3), RSMo Cum. Supp. 1963, which empowers the court to grant limited driving privileges to one whose license has been revoked. That subsection is as follows:

"When a court having jurisdiction finds that a chauffeur or operator is required to operate a motor vehicle in connection with his business, occupation or employment, the court may grant such limited driving privilege as the circumstances of the case may justify if the court also finds undue hardship on said individual in earning a livelihood, and while so operating a motor vehicle within the restrictions and limitations of such court order such driver shall not be guilty of operating a motor vehicle without a valid driver's license. * * *"

As can be seen from the reading of this subsection, no such privilege could be granted to one adjudged guilty of driving while intoxicated. This prohibition was removed in 1963 with the enactment of Section 564.440 (5), RSMo Cum. Supp. 1963:

"Any other provision in section 302.309, RSMo, to the contrary notwithstanding, when a court having jurisdiction finds that a chauffeur or operator is required to operate a motor vehicle in connection with his business, occupation or employment, the court may grant such limited driving privilege as the circumstances of the case may justify if the court also finds undue hardship on said individual in earning a livelihood; provided, however, no such limited privilege shall be granted after conviction of a second offense of the crime mentioned here."

It can be seen that neither of these sections makes specific mention of the power of the court to amend, modify or revoke a previously entered order granting limited driving privileges. However, both sections clearly vest the court with considerable discretion in determining the circumstances required to warrant the grant of this privilege. To hold that the court may exercise its discretion in making such an order, but that it then loses jurisdiction of the case and may not alter or revoke the order in the light of a possible change in circumstances, would be an absurdity and would serve only to defeat the clear expression of legislative intent. The court having discretion and consequent jurisdiction to make the order granting the limited driving privilege does not thereby and thereafter exhaust its power, authority and jurisdiction over the subject matter of the order.

In 21 C.J.S., Courts § 88, p. 138, it is stated:

"Every court has inherent power to control, and prevent abuse of, its orders or processes and its procedure."

This principle has been recognized by our Supreme Court. In *State ex rel. Gentry v. Becker*, Mo., 174 S.W. 2d 181, 183, the Supreme Court held that certain powers are necessarily inherent in the court:

". . . 'to do all things that are reasonably necessary for the administration of justice' and in order that it may preserve its existence and function as a court and which powers exist and inhere merely because it is a court and irrespective of legislative or constitutional grant.
" . . ."

See also Clark v. Austin, Mo., 101 S.W. 2d 977, 988
(concurring opinion of Judge Ellison).

The instant case demonstrates the underlying reason for the principle that a court has the inherent power to enforce its own orders. The limited driving privilege granted the petitioner was conditioned upon his obtaining liability insurance. From the facts set out in your letter, it seems clear that the petitioner did not obtain insurance but still purported to drive pursuant to the order. Obviously, the court's order is totally meaningless and the intention of the Legislature is frustrated if the petitioner is free to use the court's order as authority to drive but fails to comply with its terms and conditions. Necessarily, the court must retain jurisdiction to revoke the order in the event of violation or to modify it if there should be a change in circumstances.

It is true, as will be pointed out in answer to your next question, that one who operates a motor vehicle in violation of an order granting limited driving privileges may be prosecuted criminally. However, this cannot be said to be the only remedy by which the court's order may be enforced. The Legislature has vested sole discretion in the court in determining whether or not such privileges shall be granted, whereas the prosecuting attorney has sole discretion in determining whether criminal charges shall be filed. Thus, the court must retain its own enforcement powers, else the legislative grant of discretion would be transferred from the circuit court to the prosecuting attorney.

It is therefore our view that the circuit court retains jurisdiction to modify, amend or revoke its order granting limited driving privileges at any time during which the petitioner's license is under suspension or revocation.

No procedure is specified by law for the revocation of an order granting such a privilege. However, we believe that the requirements of due process oblige the court to hold a hearing at which a violation of the order must be established to the satisfaction of the court prior to revocation or modification. In this connection we again direct your attention to the opinion to the Honorable Bill Davenport previously referred to. While that opinion was concerned with the procedure to be followed in determining whether the privilege should be granted initially, we believe that the remarks made there are also appropriate here, as follows:

"There is no provision in the statute which places a duty with respect to the matter on any public official other than the court, except that the petitioner clearly has the burden of proof to satisfy the court of the conditions and qualifications to bring the petitioner within the purview of the relief sought. Certainly, the court would want to satisfy itself that the applicant has met the qualifications and conditions required by the statute. The court might be satisfied with the proof adduced by the applicant only, or the court might desire some additional investigation, proof or assistance in connection with ascertaining the facts. It would not be inappropriate for the court to either seek the aid of the prosecuting attorney or to appoint a friend of the court to assist the court in ascertaining the facts and determining whether or not the applicant has sufficiently proved to the court that he has met the conditions of the statute and is entitled to the relief sought."

Your third question may be stated as follows:

In the event that the Circuit Court is not empowered to revoke the order, or as an alternative to such procedure, should the prosecuting attorney file a charge against the defendant for driving without a valid operator's license?

As we have stated, the circuit court retains power to revoke the limited driving privilege. However, this privilege acts as a substitute for the valid operator's license otherwise required, and in the event that a person who has been granted such privilege should operate a motor vehicle contrary to the terms of the court's order or beyond the limitations imposed therein, said operation would be without a valid operator's license. In such case a charge of driving without a valid operator's license could be filed by the prosecuting attorney. Revocation by the court and criminal prosecution are concurrent remedies in this situation.

Your fourth question may be stated as follows:

If a charge is filed and the defendant is convicted does this conviction automatically nullify the limited driving privilege granted pursuant to the court order?

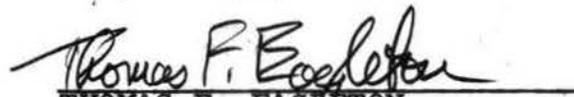
We find nothing in either of the statutes previously quoted to the effect that a subsequent conviction shall operate to nullify an order of the court which grants a limited driving privilege. As we have previously pointed out, the power to enforce the order, as such, lies exclusively with the court which granted it. Therefore, it is our view that such an order is not nullified automatically by a subsequent conviction but that some action of the court based upon the conviction is necessary. It would, of course, be the duty of any prosecuting attorney involved in criminal proceedings against one who purports to operate a motor vehicle by virtue of a court order to notify the court which granted the order if the defendant is convicted.

CONCLUSION

1. A circuit court which has granted an order providing for limited driving privileges retains jurisdiction to revoke, amend or modify the order during the time it is in effect.
2. One who has obtained such an order but who operates a motor vehicle contrary to its terms is subject to a criminal charge for driving without a valid operator's license.
3. In the event of a conviction of such a charge the limited driving privilege previously granted is not automatically revoked but must be revoked by the court which originally entered the order granting the privilege.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, James J. Murphy.

Very truly yours,


THOMAS F. EAGLETON
Attorney General

ENCLOSURES