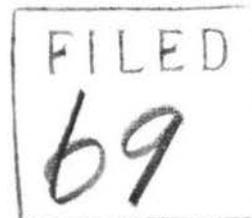


DRIVERS LICENSES: The revocation of the operator's license
DRIVERS LICENSE SUSPENSION: of one who has refused to take a chemical
DRIVING WHILE INTOXICATED: breath test as provided in Sections 564.441
MOTOR VEHICLES: and 564.444, RSMo Supp., 1965, may not be
rescinded except for those reasons set out
in paragraph 2 of Section 564.444 and is not
affected by a subsequent finding of not guilty of a charge of driving
while intoxicated under Section 564.440, RSMo Supp., 1965.

OPINION NO. 438 (1965)
OPINION NO. 69 (1966)

February 28, 1966

Honorable Thomas A. David, Director
Department of Revenue
Jefferson Building
Jefferson City, Missouri



Dear Mr. David:

This is in answer to your request for an opinion of this office as to whether an order of the Director of Revenue revoking the license of a person who has refused to take a chemical breath test as provided by Section 564.444, RSMo Supp., 1965, is affected by a subsequent finding of not guilty of the charge of driving while intoxicated brought under Section 564.440, RSMo Supp., 1965.

Section 564.440, RSMo Supp., 1965, provides that no one shall operate a motor vehicle while in an intoxicated condition. Criminal penalties are provided for conviction thereof.

Section 564.444, RSMo Supp., 1965, provides that the Director of Revenue, after receiving a proper report, shall revoke the license of any person who has refused to submit to a chemical breath test as required by Section 564.441, RSMo Supp., 1965. Paragraph 2 of Section 564.444 provides that upon judicial review the only questions to be determined are:

- "(1) Whether or not the person was arrested;
- (2) Whether or not the arresting officer had reasonable grounds to believe that the person was driving a motor vehicle while in an intoxicated condition, and,
- (3) Whether or not the person refused to submit to the test."

Honorable Thomas A. David, Director

Although your question has not heretofore been ruled upon in this state, it has been considered in at least two other jurisdictions. In each case, the court found that the fact that a person may have been acquitted of the offense of driving while intoxicated does not preclude the revocation of his license by an administrative board for refusal to submit to a chemical test to determine the alcoholic content of his blood. *Prucha v. Department of Motor Vehicle, Neb.*, 1961, 110 N.W.2d 75, 88 A.L.R. 2d 1055; *Combes v. Kelly*, 1956, 152 N.Y.S.2d 934; *Anderson v. MacDuff*, 1955, 143 N.Y.S. 2d 257; Anno. 88 A.L.R.2d 1055, 1076.

The reasoning behind the ruling of these courts is that the statutes providing criminal convictions for drunken driving are entirely independent from statutes authorizing the Director of Revenue to revoke the license of one who refuses to take such a chemical test.

The former type statute is criminal in nature in which an accused is presumed to be innocent and the burden is upon the prosecution to establish his guilt beyond a reasonable doubt. The latter is an administrative proceeding by which a person's license to operate a motor vehicle is withdrawn. The operation of a motor vehicle, so these cases say, is a privilege not a right and may be withdrawn upon reasonable grounds. See *Barbieri v. Morris*, Mo.Supp., 315 S.W.2d 711.

Section 564.441, RSMo Supp., 1965 provides:

"Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent to, subject to the provisions of sections 564.441, 564.442 and 564.444, a chemical test of his breath for the purpose of determining the alcoholic content of his blood if arrested for any offense arising out of acts which the arresting officer had reasonable grounds to believe were committed while the person was driving a motor vehicle while intoxicated. * * *"

Refusal to consent to a chemical breath test or other test to determine the alcoholic content of the blood has been held to constitute reasonable grounds sufficient to revoke a license. *Lee v. State*, Kan., 1961, 358 P.2d 765; *Ballou v. Kelly*, 1958, 176 N.Y.S.2d 1005. See also *Schutt v. MacDuff*, 1954, 127 N.Y.S.2d 116.

Honorable Thomas A. David, Director

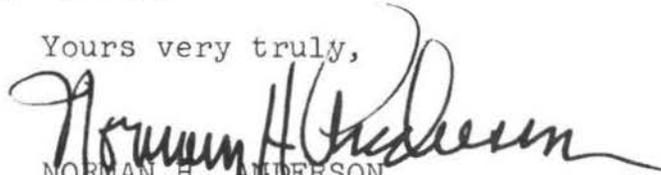
The reasoning in the cases cited above would also be applicable to the Missouri statutes. Section 564.440, although amended in 1963, has been in existence in somewhat similar form for many years. Sections 564.441 and 564.444 were enacted by the 1965 Legislature. There is no evidence that the Legislature intended that a revocation under 564.444 would in any way be dependent upon the result of a prosecution under Section 564.440. Any such contention is refuted by the statute itself. Paragraph 2 of Section 564.444 enumerates the only questions that may be considered on review to determine the validity of the revocation.

CONCLUSION

For these reasons, it is the opinion of this office that the revocation of the operator's license of one who has refused to take a chemical breath test as provided in Sections 564.441 and 564.444, RSMo Supp., 1965, may not be rescinded except for those reasons set out in paragraph 2 of Section 564.444 and is not affected by a subsequent finding of not guilty of a charge of driving while intoxicated under Section 564.440, RSMo Supp., 1965.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. John H. Denman.

Yours very truly,


NORMAN H. ANDERSON
Attorney General