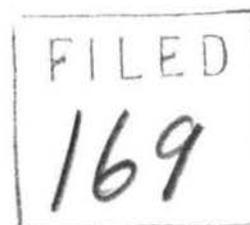


April 20, 1966

OPINION NO. 169
Answered by Letter-Denman



Honorable Thomas A. David
Director 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 arrest for driving a motor vehicle while intoxicated in violation of Section 564.440, RSMo. Supp. 1965, constitutes an arrest which would justify the administration of a chemical test of the breath of the driver under Section 564.441, RSMo. Supp. 1965, and the revocation of his license if he refuses to take the test under such circumstances. Section 564.444, RSMo. Supp. 1965.

You refer to the case of Sappington vs. David in the Circuit Court of Jackson County, Missouri, No. 673629, in which Judge Randall set aside a revocation of the license of Mr. Sappington under Section 564.444 because he was arrested for driving a motor vehicle while in an intoxicated condition. This ruling was appealed by the state and pending a final decision by the Supreme Court of this State, we do not feel it advisable for this office to render a formal opinion on the question.

Until a decision is rendered, we feel that the Director of Revenue should take the position that a person arrested for driving while intoxicated may be required to take a chemical breath test and, if he refuses, his license should be revoked.

Honorable Thomas A. David

In your letter you also stated that an assistant prosecuting attorney of Jackson County has requested us to brief the question of the constitutionality of the chemical breath statutes in Sections 564.441-564.444, RSMo. Supp. 1965. While we are pleased to assist the various prosecuting attorneys throughout the state on legal questions of public importance, it is not our policy to prepare legal briefs for a prosecuting attorney. However, the statutes in question have been declared unconstitutional by a circuit judge in at least one other case which has been appealed to the Supreme Court of Missouri, and we will send Mr. Schollars a copy of our brief on this question when it is prepared.

Very truly yours,

NORMAN H. ANDERSON
Attorney General

JHD:cw