

DRIVERS LICENSE:
DRIVERS LICENSE REVOCATION:
DRIVING WHILE INTOXICATED:
HARDSHIP DRIVING PRIVILEGES:
MOTOR VEHICLES:

Upon proper showing, limited driving privileges may be granted pursuant to Section 302.309, RSMo Supp. 1965, to one whose license has been revoked for failure to submit to a chemical breath test as provided by Section 564.444, RSMo Supp. 1965.

November 3, 1966

OPINION NO. 332

Honorable Lawrence J. Lee
Prosecuting Attorney
City of St. Louis
Municipal Courts Building
14th and Market Streets
St. Louis, Missouri 63103



Dear Mr. Lee:

This is in answer to your request for an opinion of this office as to whether limited driving privileges may be granted to one whose license has been suspended for refusal to submit to a chemical breath test.

Sections 564.441-564.444, RSMo Supp. 1965, sometimes referred to as the "Implied Consent Law", enacted in 1965, provide that any person who operates a motor vehicle upon the highways of this state shall be deemed to have given his consent to a chemical breath test 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. Section 564.444.

If the accused submits to the test, the results obtained may be used in evidence in a prosecution for drunken driving, subject to the presumptions of intoxication prescribed in Section 564.442.

If one requested to take the test refuses, no test is given. However, the Director of Revenue is required to revoke the license of such a person for a period of not more than one year. Section 564.444. The Act contains no provisions for granting hardship or limited driving privileges to one who loses his license for refusal to submit to the test.

The primary authority empowering the courts to grant such hardship driving privileges is contained in paragraph 3 of Section 302.309, RSMo Supp. 1965, as follows:

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"3. (1) All circuit courts and magistrate courts located in counties which are a part of a multi-county judicial circuit shall have jurisdiction to hear applications for hardship driving privileges.

"(2) When any court of record 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 justify if the court also finds undue hardship on the individual in earning a livelihood, and while so operating a motor vehicle within the restrictions and limitations of the court order the driver shall not be guilty of operating a motor vehicle without a valid driver's license.

"(3) An operator or chauffeur may make application to the proper court in the county in which the operator or chauffeur resides or in the county in which is located his principal place of business or employment. Any application for a hardship driving privilege shall be accompanied by a copy of the applicant's driving record for the next preceding five years as certified by the director and proof of financial responsibility as required by chapter 303, RSMo.

"(4) The court order granting the hardship driving privilege shall indicate the termination date of the order, which shall be not later than the end of the period of suspension or revocation. A copy of the order shall be sent by the clerk of the court to the director, and a copy shall be given to the driver which shall be carried by him whenever he operates a motor vehicle. A conviction which results in the assessment of points under the provisions of section 302,302, other than a violation of a municipal stop sign ordinance where no accident is involved, against a driver who is operating a vehicle under the authority of a court order terminates the order, and the court in which the conviction occurs shall immediately so notify the driver, the director and the court which granted the order.

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"(5) This subsection does not apply to any person whose license has been suspended or revoked:

(a) For any reason which would have disqualified him or made him ineligible for a license under section 302.060, or to any person whose license has been revoked by reason of an unsatisfied judgment against him or whose license has been revoked for failure to comply with the safety responsibility law, or

(b) Because of operating a motor vehicle while intoxicated, except as provided in section 564.440, RSMo, or under the influence of narcotic drugs or who has been convicted of any felony in the commission of which a motor vehicle was used. In no case shall limited driving privileges be granted to a person on the basis of undue hardship more than one time within a period of five years."

Although Section 302.309 is a part of Chapter 302 which, among other things, provides for the suspension and revocation of the drivers license of habitual traffic violators, the provisions of paragraph 3 are not specifically limited to the deprivation of a license under this Chapter. Nothing in the language of subparagraphs (1)-(4) of this paragraph in any way limits its application to suspensions or revocations under the point-system, but appears to apply to anyone whose license has been suspended or revoked.

The only limitations are those provided in subparagraph (5) which states that the privilege shall not be granted to any person whose license has been suspended or revoked under circumstances set out therein.

The fact that several of the limitations in subparagraph (5) refer to persons whose license has been suspended or revoked for offenses set out in chapters other than 302; i.e., for failure to comply with the safety responsibility law - Chapter 303, and because of operating a motor vehicle while intoxicated - Section 564.440 indicates the legislative intent that the privileges authorized by this section apply in all circumstances in which a person has had his license suspended or revoked, except as provided in subparagraph (5) and are not limited only to the provisions of Chapter 302.

It should be noted that paragraphs 1 and 2 of Section 302.309 read in part as follows:

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"1. Whenever any operator's or chauffeur's license is suspended under sections 302.302-302.309 * * *.

"2. Any operator or chauffeur whose license is revoked under these sections, * * *."

The specific limitation of these paragraphs to the sections indicated, coupled with the absence of any such limitation in paragraph 3, furnishes a further indication that the legislature did not desire that the hardship privileges authorized therein be restricted to those whose license was suspended or revoked under the provisions of Chapter 302.

The only other authority for granting limited driving privileges is contained in Section 564.440, RSMo, which is limited to the suspension or revocation of the license of one convicted of driving while intoxicated. Since the purpose of enacting statutes requiring one to submit to an intoxication test or lose his license is to clear our highways of those who drink and drive, it would not be reasonable to assume that the legislature intended to allow limited driving privileges to be granted those actually convicted of driving while intoxicated but withhold this privilege from those who had only refused to submit to a test to determine whether or not they were intoxicated.

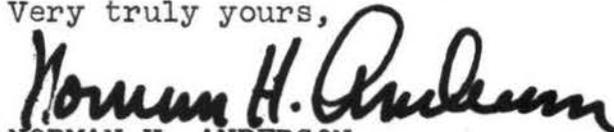
It is, therefore, our opinion that limited driving privileges may be granted to one whose license was revoked under Section 564.444 for failure to submit to the Missouri "breathalyzer" test. Of course, this privilege may not be granted except upon compliance with all of the requirements of Section 302.309-3, especially those regarding proof of financial responsibility as required by subparagraph (3).

CONCLUSION

Upon proper showing, limited driving privileges may be granted pursuant to Section 302.309, RSMo Supp. 1965, to one whose license has been revoked for failure to submit to a chemical breath test as provided by Section 564.444, RSMo Supp. 1965.

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

Very truly yours,



NORMAN H. ANDERSON
Attorney General