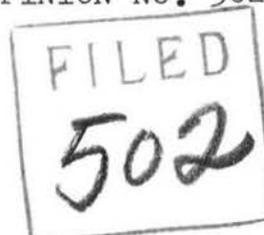


DRIVERS LICENSE:
DRIVERS LICENSE REVOCATION:
DRIVING WHILE INTOXICATED:
MOTOR VEHICLES:

The word "offense" used in subparagraphs (1), (2) and (3) of Section 564.440, RSMo Supp. 1965, refer only to violations of this section, the state law, and does not include convictions for driving while intoxicated in violation of a county or municipal ordinance.

December 9, 1966

OPINION NO. 502



Honorable Charles G. Hyler
Prosecuting Attorney
St. Francois County
Courthouse
Farmington, Missouri 63640

Dear Mr. Hyler:

This is in answer to your request for an opinion of this office which reads as follows:

"We have a situation where a man was convicted of driving while intoxicated in the City of Ferguson in St. Louis County, and has subsequently been convicted of driving while intoxicated in St. Francois County Magistrate Court.

"The question I have is the conviction in the Magistrate Court of St. Francois County to be taken as a second offense or a first offense under the D.W.I. Statute, taking into consideration the fact that the first conviction was in a City Court and not the Magistrate Court."

Operating a motor vehicle while intoxicated is made an offense under state law by Section 564.440, RSMo Supp. 1965, which provides in part as follows:

"No person shall operate a motor vehicle while in an intoxicated condition. Any person who violates the provisions of this section shall be deemed guilty of a mis-
demeanor on conviction for the first two violations thereof, and a felony on conviction for the third and subsequent violations

Honorable Charles G. Hyler

thereof, and, on conviction thereof, be punished as follows:

(1) For the first offense, by a fine of not less than one hundred dollars or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment;

(2) For the second offense, by confinement in the county jail for a term of not less than fifteen days and not exceeding one year;

(3) For the third and subsequent offenses, by confinement in the county jail for a term of not less than ninety days and not more than one year or by imprisonment by the department of corrections for a term of not less than two years and not exceeding five years;

(4) Evidence of prior convictions shall be heard and determined by the trial court, out of the hearing of the jury prior to the submission of the case to the jury, and the court shall enter its findings thereon;"

* * * * *
(Emphasis added)

There are also municipal ordinances forbidding and punishing drunk drivers and you state in your letter that the person was convicted in the City of Ferguson under a municipal ordinance.

The question thus raised is whether the term "offense" as used in subparagraphs (1), (2) and (3) in Section 564.440, RSMo Supp. 1965, is limited to the offense proscribed by the state law only, or does it include a conviction of driving while intoxicated under a city ordinance.

It is a familiar principle of statutory construction that legislative enactments are to be construed in a manner to effectuate the intent of the General Assembly in their passage. In determining this intent, recourse may be had to the language contained in the statute itself, statutes in pari-materia, the history of the act and the mischief it was designed to remedy.

Prior to its amendment in 1961, Section 564.440, RSMo 1959, provided:

Honorable Charles G. Hyler

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

Sanctions for conviction thereof were set forth in Section 564.460, RSMo 1959, as follows:

"Any person who violates the provisions of section 564.440 or 564.450 shall be deemed guilty of a felony and on conviction thereof shall be punished by imprisonment in the penitentiary for a term not exceeding five years or by confinement in the county jail for a term not exceeding one year, or by a fine not exceeding one hundred dollars, or by both such fine and imprisonment."

By the language that the penal provisions of Section 564.460 applied only to those convicted of violating the state law, the legislature clearly indicated that such provisions were not applicable to violations of municipal or county ordinances.

The enacting clause of the 1963 act, amending the law to its present form, stated that by the new act, Sections 564.440 and 564.460, RSMo 1959, were repealed and Sections 564.440, 564.441, 564.445 and 564.446, were enacted in their place. Laws 1963, p. 686. Thus, the legislative history of the act supports the conclusion that the punishment provided therein was intended to cover convictions under the state law only.

This conclusion is further supported by considering the language of the section as now written. The first paragraph delineates the offense and then provides that "on conviction thereof, be punished as follows". The use of the word "thereof" strongly indicates that the following punishments were for conviction of the "offense" previously described.

In addition, the first paragraph provides that "any person who violates the provisions of this section shall be deemed guilty of a misdemeanor on conviction for the first two convictions thereof, and a felony on conviction for the third and subsequent violations thereof". The punishments following conform to the provisions relating to violations of "this section" in that the first two call for punishments consistent with that of a misdemeanor conviction and the third is consistent with a graded felony conviction.

Honorable Charles G. Hyler

It has become well-established that penal statutes must be strictly construed against the state and liberally in favor of the defendant. State v. Chadeayne, Mo. Sup., 323 S.W.2d 680; State v. Getty, Mo. Sup., 273 S.W.2d 170; City of St. Louis v. Brune Management Co., Mo. App., 391 S.W.2d 943. The present wording of the statute as well as its legislative history indicates an intent by the legislature that the increasing severity of the punishment apply only to convictions of the "offense" of operating a motor vehicle while in an intoxicated condition in violation of the state law, Section 564.440, RSMo Supp. 1965.

CONCLUSION

It is our opinion that the word "offense" used in subparagraphs (1), (2) and (3) of Section 564.440, RSMo Supp. 1965, refers only to violations of this section, the state law, and does not include convictions for driving while intoxicated in violation of a county or municipal ordinance.

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

Very truly yours



NORMAN H. ANDERSON
Attorney General