

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

1. Commission of another offense incident to driving while intoxicated is not necessary in order to convict an individual for the offense of "driving while intoxicated."

2. An individual arrested for "driving while intoxicated" may have his license revoked for refusing to submit to a breath test, whether the arrest involved another offense incident to driving while intoxicated or not.

OPINION NO. 41 (1967)
362 (1966)

August 3, 1967

Honorable Gene McNary
Prosecuting Attorney
St. Louis County
Clayton, Missouri 63105



Dear Mr. McNary:

Your predecessor in office requested an opinion concerning the acquittal of a defendant of the charge of Driving While Intoxicated because the arresting officer had placed the defendant under arrest for Driving While Intoxicated and had not filed any additional charge against the defendant.

Section 564.440, RSMo 1965 Cum. Supp., provides in part:

"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 misdemeanor on conviction for the first two violations thereof, * * * and a felony on conviction for the third and subsequent violations, * * *."

There is no reference to the necessity of charging and proving any other offense before one can be convicted of "driving while intoxicated." Consequently, the court action referred to is erroneous. See State v. Hicks, Mo., 376 SW2d 160; State v. Davis, Mo., 371 SW2d 270; State v. Richardson, Mo., 343 SW2d 51; State v. Ryan, Mo., 275 SW2d 350.

Apparently there has been some confusion in the application of the criminal sanctions against driving while intoxicated with Section 564.441, RSMo, 1965, Cum. Supp., authorizing the administration of a breath test to determine the blood alcohol content of anyone arrested for any offense arising out of acts which the arresting officer had reasonable grounds to believe were committed while the person was operating a motor vehicle while intoxicated. Section 564.444, RSMo Cum. Supp., 1965, provides that the driver's license shall be revoked if he refuses to submit to the test.

As was pointed out in the opinion of this office, (No. 390-66, copy attached) conviction or acquittal of the offense of driving while intoxicated has nothing to do with revocation of the driver's license for refusal to submit to the breath test. (See also attached Opinion No. 69 - 1966)

The statute providing for revocation (Section 564.444, RSMo 1965, Cum. Supp.) also provides that the person whose license has been revoked may request a hearing before a court of record in the county where he resides or where the arrest occurred, which court shall determine three things only:

- "(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."

Reaching the question of whether or not the individual "was arrested for any offense arising out of acts * * * etc.," committed while the driver was driving in an intoxicated condition, there is a universally accepted axiom of statutory construction to the effect that general statutory language should be given its plain ordinary meaning according to the context in which it appears (see State vs. Plotner, Mo., 222 SW 767.) Applying reasonable construction to the language employed, it is not too difficult to see that driving a car while drunk, which is prohibited by Section 564.440, is an "offense" arising out of an "act" which the person is committing by "driving a motor vehicle while intoxicated."

Hapless confusion of terminology and semantics cannot be employed to defeat the plain meaning of the law involved.

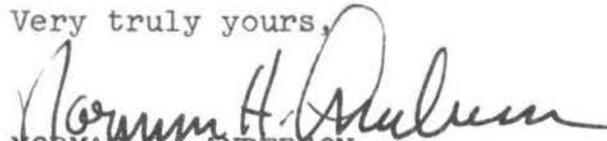
CONCLUSION

1. An individual may be convicted for the offense of driving while intoxicated whether he has committed another offense incident thereto or not.

2. An individual who has been arrested for "driving while intoxicated" and who has refused upon request to submit to a test of his breath for determining alcoholic content may have his license revoked whether the arrest involved another offense incident to driving while intoxicated or not.

The foregoing opinion which I hereby approve, was prepared by my Assistant, Howard L. McFadden.

Very truly yours,



NORMAN H. ANDERSON
Attorney General

Encl:

No. 69 (1966)
February 28, 1966
Honorable Thomas A. David

No. 390 (1966)
August 11, 1966
Honorable Daniel V. O'Brien