

Honorable Bob F. Griffin-

Opinion No. 137 (1968)  
No. 475 (1967)  
Answered by Letter (Klaffenbach)

May 13, 1968

Honorable Bob F. Griffin  
Prosecuting Attorney  
Clinton County  
223 East Third Street  
Cameron, Missouri 63156



Dear Mr. Griffin:

This is in response to your inquiry which is as follows:

"Please furnish me with an opinion from your office concerning the revocation of an individual's Operator's License by the Director of Revenue under the provisions of Section 564.444, R.S.Mo., 1959 for refusal to submit to chemical test (breathalyzer) upon affidavit filed by arresting officer attesting to an individual's refusal to submit to said chemical test, under the following situation:

"1. The arresting officer advised the subject and did attest to having given said warning in his affidavit filed with the Director of Revenue; that 'said arrested persons driver's license may be revoked for one year upon his refusal to take the test, all as is provided in Section 564.444, R.S.Mo., 1959; but did not in fact advise said arrested person and the affidavit made by the officer did not attest to having given said advice to the effect 'that said arrested persons driver's license would be revoked for one year upon his refusal to take the test.'

"It would appear to me from an examination of the applicable law in this instance that the Director of Revenue has no choice or discretion in a case where the arrested person has in fact refused to take the chemical test and

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in accordance with the specific language of Section 564.444 R.S.Mo., 1959, 'upon receipt of the officer's report, the Director shall revoke the license of the person refusing to take the test for a period of not more than one year;' and therefore, it would appear to me that an arresting officer giving the advice set forth in said Section, although complying with said Section, would not in fact be properly advising the arrested person of his rights and the consequence of his refusal to submit to a chemical test."

As you state, Section 564.444, RSMo Supp., does use the term "may" in that, that section requires that the officer inform the person under arrest that his driver's license "may" be revoked upon his refusal to take the test. You are also quite right in that the affidavit used by the officer, pursuant to that section, which is directed to the Director of Revenue, also uses the term "may" and is a verification that the arrested person was informed that "his driver license may be revoked for 1 year upon his refusal to take the test."

We have examined comparable laws of other states and find that in some the police officer is instructed to advise the arrested person that his license will be revoked and in others there is no requirement that the person be advised in any manner. We recognize that in some instances the legislature uses the term "may" with an obvious intent that it have the same meaning as "shall." In the premises, however, there is no reason to conclude that the legislature meant anything other than they actually declared.

While it may well be that due regard to caution and fair play might dictate that the word "will" or "shall" might have been preferred, nevertheless it was not used and the failure to use it cannot be said to render the statute invalid or unconstitutional. Our courts have not held precisely on this point. However, it was held in Blydenburg v. David, 413 S.W.2d 284 (1967), at l.c. 290, that a license to operate a motor vehicle may be suspended or revoked by an administrative agent authorized by law to do so without prior notice or hearing since due process of law is satisfied if there is provision for an administrative hearing subject to judicial review or the right to have a hearing in a court which may adequately review the administrative decision. The implied consent laws are in fact civil in nature. Blydenburg, supra, l.c. 290.

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We conclude that the only appropriate advice that the arresting officer can give is that prescribed by law and in this case, couched in the language of the statute. Absent any violation of due process, any change remains a legislative prerogative.

Yours very truly,

NORMAN H. ANDERSON  
Attorney General

JCK:df