MOTOR VEHICLES:
OPERATOR'S AND
CHAUFFEUR'S LICENSES:
CRIMINAL LAW:

Subsection 4 of Section 302.010 is constitutional. Driver's license may be suspended for convictions in proper court while convictions may be on appeal.

FILED
35

October 21, 1957

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Honorable Leslie R. Groves
State Representative
521 Sunset Drive
Macon, Missouri

Dear Mr. Groves:

This is in response to your request for an opinion dated September 11, 1957, which reads in part as follows:

> "I hereby request an opinion from you as to whether or not Section 302.010(4) is constitutional. I would also like to know whether or not that statute is rendered ineffective by its apparent inconsistency in that it defines 'conviction' as any conviction 'whether appealed or not' but then goes on to say that if the conviction is appealed and reversed or set aside it shall not be considered a 'conviction'. "

In accordance with Section 302.010, enacted by the 68th General Assembly in 1955, L. 1955, p. 621, the present definition of "conviction" in the Missouri Driver's License Law is as follows:

> "(4) 'Conviction', any conviction whether appealed or not, except that if any conviction is appealed and reversed or set aside on appeal it shall not be considered a 'conviction' under this chapter; also a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction;"

Upon first consideration there may be a serious question arise in regard to the constitutionality of such a definition. This is so since it has been pointed out that this definition is the basis for the revocation of a

driver's license under the provisions of Section 302.271, Cum. Supp. 1955. That section providing for revocation for conviction upon three charges of careless or reckless driving committed within a period of two years. In order to better understand the situation herein, it is thought best to inquire first as to whether a driver's license under the law is such a property right that it is to be protected by the due process of law provisions of the Missouri Constitution of 1945. That a license to operate a motor vehicle upon the state highways is a privilege and not a property right or a personal right, has been decided by the majority of the appellate courts of the country. It is thought that the Missouri Law is as stated in the case of Schwaller v. May, 234 Mo. App. 185, 115 S.W. 2d 207 at l.c. 209. In that case, in regard to such license, it was stated by the St. Louis Court of appeals as follows:

> "To the contrary, it amounted to no more than a personal privilege extended to him to be exercised subject to the restrictions placed upon its use by the sovereign power of its creation, which means that he took it subject to the right of suspension or revocation on such conditions as the ordinance imposes."

In the case of State v. Guerringer, 178 S.W. 65, 265 Mo. 408, at l.c. (S.W.) 67, it was said by the Missouri Supreme Court as follows:

> "Moreover, the Constitution guarantees to defendant that he shall not be deprived of his property, or his liberty, or his life without due process of law. Section 30, art.2, Const. Mo. 1875. If he had no opportunity to file a motion for a new trial, as we must concede he did not have, but notwithstanding this his life be taken, it will have been taken without due process of law; for, while the right of appeal is not essential to due process of law (Reetz v. Michigan, 188 U.S. loc. cit. 508, 23 Sup. Ct. 390, 47 L. Ed. 563), yet, if an appeal be

> allowed to some persons, and not to all persons similarly situated, such deprivation of the right to an appeal is equivalent to the denial of due process of law, for due process of law and the equal protection of the laws are secured only 'if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government' (Duncan v. Missouri, 152 U.S. loc.cit. 382, 14 Sup. Ct. 572, 38 L.Ed. 485)."

A more recent decision on this point is contained in the case of Ex parte Carey, 267 S.W. at l.c. 807 as follows:

> "In Missouri there is no constitutional right to bail after conviction; the provision guaranteeing bail, except in capital cases, relates to persons who are accused, before trial and conviction. Ex parte Heath, 227 Mo. 393, 126 S.W. 1031. Nor is there any constitutional right of appeal in this state. Such right is enjoyed solely by statute, and the privileges and immunities ancillary thereto, including stay of execution and bail pending the appeal, are likewise of statutory creation, and consequently limited to the number and kind given by statute. Ex parte Heath, supra; State v. Leonard, 250 Mo. 406, 157 S.W. 305."

It is believed from the citations above that it must be concluded that the right of appeal is not essential to due process of law; that there is no right of appeal unless it is provided for by statute. It is believed it must be considered, therefore, that the legislature can provide for the revocation of a driver's license for a conviction by a proper trial court while that conviction is on appeal to a higher court.

It is not thought that the exception as to the deprivation of the right to an appeal being discriminatory so as to be construed as a denial as a due process of law,

as pointed out in the Guerringer case, above, could be raised here. The law treats all of those similarly situated in a like manner in regard to the revocation of drivers' licenses. It is believed that conviction in the first instance by a duly constituted, lawful court satisfies the constitutional guaranty of due process of law. Further procedure thereafter in a criminal cause must be in accordance with statute law. When the legislature has enacted a law defining the conditions under which persons will be prohibited licenses to use the state highways, it is thought that the two main tests of the constitutionality of that law are those of uniformity and of reasonableness. The reason for the new definition appears to be that where three convictions of careless or reckless driving within the prescribed period of time by trial courts are had, it is deemed evidence enough of the driving habits of an operator so convicted to cause the revocation of his driver's license. Since time for an appeal of the third, second or even the first conviction during the term could carry far beyond the allotted two-year period, it may well have been the legislative intent that this law unquestionably enacted in the furtherance of public safety was not to be nullified by even the usual necessary delay caused by the taking of an appeal. Since the reasonableness of purposes can no doubt be ably substantiated by the state, the law must be said to pass that test.

This law may be also said to add attributes of uniformity rather than to detract therefrom. "Conviction" originally meant the absolutely final conviction of the highest court that could, under the law, be reached by appeal and again meant a finding from which no appeal was taken and the time for appeal had lapsed. Such a condition meant the almost immediate revocation of some licenses and then caused escape from the effect of the law of others by reason of an appeal carrying the time of a conviction beyond the requisite two-year period. No cases seem to have been decided by other jurisdictions in regard to the fact that a conviction in the court of first instance may cause a revocation. It is indicative of the general law that in a great many states conviction is merely required to support driver's license revocation rather than final conviction. There is some authority to the effect that the word "conviction" alludes to the result obtained in a trial by the court of first instance.

In the case of Ritter v. The Democratic Press Company,

68 Mo. 458, where the circuit court had disqualified a person offered as a witness on the ground that he had been convicted, while the conviction was on appeal, the court stated at l.c. 461:

> "* * * The only question is whether Saunders, sentenced as he had been to the penitentiary, though he had appealed to this court, where the judgment was reversed, was at the time he was offered as a witness, a competent one. We think the circuit court properly excluded him. He was convicted of a crime which disqualified him as a witness, and the subsequent reversal of that judgment by this court, could not be anticipated by the circuit court."

CONCLUSION

It is, therefore, the opinion of this office that Section 302.010, subsection 4, is constitutional.

The foregoing opinion, which I hereby approve, was prepared by my assistant, James W. Faris.

Very truly yours,

John M.Dalton
Attorney General

JWF:db:lc