DRIVER'S LICENSE SUSPENSION: HABITUAL RECKLESS OR NEGLIGENT DRIVER: HABITUAL VIOLATOR OF TRAFFIC LAWS:

A careless and reckless driving charge can be made only under authority of Section 304.010-1. The Director of Revenue has authority to suspend a license when reliably informed that there is a showing by public records that there has been a sufficient number of convictions to authorize the same.

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April 4, 1958

Honorable Charles A. Powell, Jr.
Prosecuting Attorney
Macon County
Macon, Missouri

Dear Mr. Powell:

In your letter of the 11th of February you wrote:

> "I would appreciate an attorney general's opinion respecting whether a charge which does not include allegations of 'careless and reckless' operation can support a conviction (or a plea of guilty) of careless and reckless driving within the meaning of the 'habitual reckless or negligent driver' definition, Sec. 302.010 (7).
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> "* * * And I would appreciate, also, an opinion on what information, or report of conviction, the supervisor of the Licensing Department is authorized to act on, in suspending a license. * * *"

The "charge of careless and reckless driving" in this State is brought for violation of the basic rules for careful driving stated in Section 304.010-1. The rule stated therein is worded now as it has been for the past 37 years. The only charge regarding speed it contains is " * * * and at a rate of speed so as not to endanger the property of another or the life or limb of any person."

The section also contained a provision regarding a presumption of a speed that was not careful and prudent but the burden was on

the one making the charge to show that the speed was excessive under the existing circumstances. It will be noted that even now this subsection fixes no definite limit of the miles per hour of the speed at which a vehicle may lawfully be driven on the public highways of Missouri. It is subsections 2 and 3 that do this.

It is now permissible, of course, under subsections 2 and 3, to charge speeding without charging careless and reckless driving. Of course, the speed maximums are not "carte blanche" authority for a driver to operate up to such speeds in all situations. The last sentence of subsection 4 of this section specifically provides "Nothing in subsections 2 and 3 shall make the speeds prescribed therein lawful in a situation that requires lower speed for compliance with the basic rule declared in subsection 1."

Previously the prosecuting attorney did and presumably still may make a charge of careless and reckless driving by coupling with it a charge of a violation of one of the "Rules of the Road" which were expressed in former Section 304.020. State v. Reynolds, (App.) 204 S.W.2d 514. Those rules are now contained in Sections 304.014 to 304.025, inclusive.

Your question rephrased is: Is a conviction of a speeding charge by itself a conviction of careless and reckless driving? Obviously, the General Assembly thought it was not. A prosecuting attorney may charge a defendant with violating the speed limit under the authority of subsections 2 or 3 of Section 304.-010 without charging careless and reckless driving, just the same as he might charge a violation of the signaling section, Section 304.019, without charging careless and reckless driving.

It is also obvious from the definitions in Section 302.010 (7) and (8) that the General Assembly recognized the distinction between careless and reckless driving and other moving traffic violations and, surely, if they intended for all speeding violations to be careless and reckless driving, they could have and presumably would have clearly so indicated.

Quite obviously, we think the answer to this question is "no"; a conviction for a speeding violation is not a conviction for a careless and reckless driving violation and may not be used to classify one as "a habitual reckless and negligent driver" as that term is defined in Section 302.010 (7). Consequently, the speeding convictions may not be used as authority to suspend a driver's license under the authority of Section 302.281-1 (2).

Honorable Charles A. Powell, Jr.

In regard to your second question, the "information" or "report of conviction" that the Director "is authorized to act on" is not stated in the statute. As you will note, Section 302.281 states that he shall suspend a license "upon a showing by the records of the director or any public records". Neither is it stated in the statute just what constitutes "a showing by * * * public records". His authority presumably exists if there has been a sufficient number of convictions because then there would most certainly be "a showing by * * * public records". The information the Director must have is the information that the public records somewhere show the sufficient number of convictions. Nothing is provided for the manner in which the Director shall be informed or what the public records show. Experience of the courts and administrative officials has long since shown that information gleaned from hearsay, telephone conversations, newspaper accounts, etc., is quite often not reliable.

You state that a recent suspension was ordered (apparently upon the theory of two careless and reckless driving convictions in two years) when one charge at least was for speeding only and not for careless and reckless driving; that the Director suspended before the convicting court forwarded the required "record of conviction". If you are correct in your statement of the facts, such, in itself, shows that the wisest course for the Director to follow is to act only after obtaining reliable information. However, only experience and good judgment can guide one in his determination as to what information is reliable. The Legislature has stated what information the Director must have. The Legislature could have, but we as one of the executive offices cannot, enumerated all of the ways by which the Director might obtain that information.

CONCLUSION

A speeding violation is not by itself a careless and reckless driving violation.

The Director of Revenue shall suspend a license when his or some public records show a sufficient number of convictions to authorize the suspension.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Russell S. Noblet.

Very truly yours,

John M. Dalton
Attorney General

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