MAGISTRATES:
MOTOR VEHICLES:
MOTOR VEHICLES OPERATORS' LICENSES:

Driver's license may be suspended as habitual reckless or negligent driver for conviction of two charges of reckless and careless driving within two years, even though one conviction occurred prior to effective date of re-enacted statute.

FILED
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November 9, 1956

Honorable Robert E. Wilson
Prosecuting Attorney, Polk County
Bolivar, Missouri

Dear Mr. Wilson:

You have requested an opinion of this office as follows:

"The Magistrate Court of this County recently suspended the driver's license of an individual for a period of one year under the following conditions. The man had previously been convicted in July of 1955 of a charge of careless and reckless driving. On June 2nd, 1956, he entered a plea of guilty to another charge of careless and reckless driving and the Magistrate made the suspension aforesaid of his license, and sent the license to the Department of Revenue in Jefferson City.

"The suspension was made pursuant to the provisions of Section 302.281(2) on the theory that the defendant was an habitual reckless or negligent driver of a motor vehicle. Section 302.010(7) defines an habitual reckless or negligent driver as one who has been convicted in any Circuit or Magistrate Court at least two times within two years of the charge of careless and reckless driving. Both of the above quoted sections of the law became effective on August 29th, 1955.

"Today the Magistrate Court here received a letter from the Department of Revenue returning the license of this individual with the statement that they did not have authority to suspend the license. They gave as their reason for this 'a subject must have two careless and reckless driving charges after August 29th, 1955, the date said law became effective.' I would

> like to have the opinion of your office as to whether the position of the Department of Revenue is correct or whether we do have the authority to suspend this license under the sections quoted above. It seems to me that this is a situation similar to proceedings under the Habitual Criminal Act, and that the suspension of the license according to the laws aforesaid would not amount to an ex post facto conviction."

Under the provision of Section 302.281, RSMo Cum. Supp. 1955, and in accordance with an opinion to Honorable Harold W. Barrick, dated August 19, 1955, it is thought that the magistrate you speak of in your request letter was fully justified in the suspension of a second offender when he had the record either before him or found the previous record of suspension inscribed on the back of the (driver's) operator's license. Of course upon such suspension the Director of Revenue is the keeper of the archives in regard to driver's licenses and unless such suspension is shown on the records in the office in Jefferson City, out of which the license was initially issued, enforcement of the law will become handicapped. The suspension would not have the proper notice and would be difficult to prove in other jurisdictions. The depository of operators' licenses is provided for by statute in the office of the Director of Revenue at least in the spirit of the law if not in the precise letter. For the clearest indication of the legal intent it is thought best to here quote from Section 302.120, RSMo 1949, subsection 1, as follows:

> "1. The director of revenue shall file every application for a license received by him and shall maintain suitable indices containing, in alphabetical order:
>
> "(1) All applications denied and on each thereof note the reasons for such denial;
>
> "(2) All applications granted; and
>
> "(3) The name of every licensee whose license has been suspended or revoked by the director of revenue and after each such name note the reasons for such action."

Records of drivers are required to be kept in this centrally located depository. It is the State of Missouri that issues drivers' licenses and through the police power of the state in the regulation of traffic upon its streets and highways it is the State of Missouri that may take such license away. This is under the broad police power of the state and it may be done through the Director of Revenue, a circuit judge or a magistrate under the law, but in the final analogy it is the state lifting a license under the law and statutes of the state.

This matter is very thoroughly dealt with in the opinion to Mr. Barrick, mentioned above. However, in the event the suspension or revocation is not tabulated in Jefferson City, it could not have the statewide effect the law intended.

It will be noted that in the present wording of the statute that the powers of revocation and suspension, when required by law, are delegated, to partially quote from both sections 302.271 and 302.281, RSMo Cum. Supp. 1955, to "the director, circuit judge or magistrate." These two sections are identical in regard to the official having the power, duty or authority to revoke or suspend as the case may be. The new sections, 302.281 and 302.010, became effective August 29, 1955.

Section 302.281, quoted, in part, for our purposes, is as follows:

> "1. The director, circuit judge or magistrate shall suspend the license of an operator or chauffeur for a period of not to exceed one year, upon a showing by the records of the director or any public records that the operator or chauffeur:"

Prior to August 29, 1955, the former definition of "habitual reckless or negligent driver"was contained in Subsection 7 of Section 302.010, Laws Mo. 1951, page 678. This law defined an habitual reckless or negligent driver as follows:

> "A person convicted at least three times within two years of the charge of careless driving within or without this state."

The new definition requires only two such convictions to constitute an habitual reckless or negligent driver. Section 302.010, Laws Mo. 1951, page 678, was repealed and the effective date of the repeal was August 29, 1955.

Section 13, Article I, of the 1945 Constitution is as follows:

> "That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be enacted."

In regard to such constitutional provision the following exception stated in 11 Am. Jur, Sec. 367, page 1196, as follows:

> "Exceptions exist to the general prohibition against retrospective laws, for such a constitutional provision does not inhibit certain retrospective laws made in furtherance of the police power of the state or laws which, although they may directly operate on vested rights, are, nevertheless, promotive of justice and the general good. * * * * *"

In State vs. Green, 360 Mo. 1249, 24 A.L.R.(2d) 340, 232 S.W. (2d) 897, at l.c. 900 there appears the following:

> "* * * *A statute is not retrospective because it merely relates to prior facts or transactions but does not change their legal effect, or because some of the requisites for its action are drawn from a time antecedent to its passage, or because it fixes the status of a person for the purpose of its operation. Dye v. School District No. 32, 355 Mo. 231, 195 S.W. 2d 874, 879; 16 C.J.S., Constitutional Law, §414, page 857; State ex rel. Ross v. General American Life Ins. Co., 336 Mo. 829, 85 S.W. 2d 68, 74; Freeman v. Medler, 46 N.M. 383, 129 P. 2d 342; Cox v. Hart, 260 U.S. 427, 43 S. Ct. 154, 67 L.Ed. 332. We have many times held that a statute is not retrospective in its operation within the constitutional prohibition, unless it impairs a vested right. McManus v. Park, 287 Mo. 109, 116, 229 S.W. 211; State ex rel. Jones v. Nolte, supra. Nor is an act retrospective if it but substitutes a remedy or provides a new remedy. McManus v. Park, supra. * * * * * * *"

In the case of City of Carthage vs. Garner, 209 Mo. 688, 108 S.W. 521, Mo. l.c. 702, Judge Graves stated for the court as follows:

> "* * * *But aside from that as above stated these two sections are but the exercise of the police power of the city, and no contract, whether by way of charter or otherwise, can take it away from the city or even abridge it in the least. If the charter granted to a corporation, or the contract with the city, undertook to abrogate or abridge this power, to that extent such instruments would be void. The corporation must exercise its charter and franchise rights subject to such reasonable police regulation as may be prescribed by the city.[City of Westport vs. Mulholland, 159 Mo. l.c. 92; State ex rel. vs. Murphy, 130 Mo. l.c. 23; State ex rel. v. Murphy, 134 Mo. l.c. 575; Railroad v. Milwaukee, 97 Wis. l.c. 422; Dillon's Municipal Corporations (4 Ed.) sec. 141.]"

Further, in reference to the license statutes, and nearer and closer to home, in Schwaller vs. May, 234 Mo. App. 185, 115 S.W. (2d) 207, l.c. 209, we have more discussion of a license, in this case a license to operate a motor vehicle:

> "We are of course aware that the license issued to petitioner to operate a motor vehicle upon the streets of the city was in no sense a contract between him and the city so as to be the basis of any claim of absolute right on his part to its continued possession. 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."

There is no vested right in any individual entitling him to operate a motor vehicle upon the highways of the State of Missouri. In the case of People vs. Thompson, 259 Mich. 109, 242 N.W. 857, the court said at l.c. 861:

> "'In accepting the license (of operating a motor vehicle upon the public highways) from the state, one must also accept all reasonable conditions imposed by the state in granting the license.* * * * *It is elementary law, where special privileges are granted by the state,

> special duties in connection therewith may be exacted without providing compensation therefor. * * * * The right to impose the condition is not based upon culpability, but, instead, it is incident to his status as a licensee.'"

It is elementary law that there is no private right to operate a motor vehicle upon the streets and highways of this state such as is protected by the constitutional inhibition against retrospective laws. There is the further application of the general rule as stated in the quotation from Am. Jur., supra, that such constitutional provision does not inhibit certain retrospective laws made in furtherance of police power of the state since the driver's license sections are directly in the furtherance of that power.

In Dinger v. Burnham, 360 Mo. 465, 228 S.W.(2d) 696, at l.c. 699, our Supreme Court stated as follows:

> "(6-8) The purpose of statutes regulating and affecting automobile traffic on the highways is the promotion of the safety of the public. They are valid exercises of the police power. Automobiles may be safer than horse-drawn vehicles when prudently driven but the special training required for their operation and their potential power to harm when improperly operated imposes a duty to keep them out of the hands of the immature, the incompetent and the reckless. The facts of the instant case demonstrate the wisdom of the legislation. Our statutes declare that one under the age of sixteen years conclusively does not possess the requisite care and judgment to operate motor vehicles on the public highways without endangering life and property."

From the foregoing it is not believed that one convicted of the second charge of careless and reckless driving within a period of two years has cause to complain that his initial offense occurred at any date within the stated period since the rules go to his qualifications as a driver.

As to the effect of the repeal of a statute and its subsequent re-enactment, it is thought best to quote Section 1.120 RSMo, 1949, which is as follows:

> "The provisions of any law or statute which is re-enacted, amended or revised, so far as they are the same as those of prior laws, shall be construed as a continuation of such laws and not as new enactments."

It is believed that this section is so clear and concise that it needs no further clarification.

In this case we have the repeal and re-enactment of a law which should in every respect merely mean the law's continuation. In 1952 the law was that an habitual, reckless or negligent driver was a person convicted three times within two years. In 1955 by a change of the definition the convictions required were cut to two. If the Legislature had intended to expunge all records of convictions of careless and reckless driving occurring prior to the August 29, 1955, effective date it could have said that in as many words. In the 1951 Laws, page 679, at l.c. 690, there appears the following: "Effective date of Act, January 1, 1952--this Act shall take effect on January 1, 1952."

Prior to that time there was no suspension law comparable to Section 302.281, supra. In the Laws of 1949, there was a revocation section for convictions of manslaughter, driving a motor vehicle while intoxicated, and using a motor vehicle in the commission of a felony. The 1949 law is silent however in regard to conditions requiring license suspensions. We have then the present Section 302.281, RSMo Cum. Supp. 1955, which was enacted originally as heretofore mentioned in 1951. As far as it is of present concern herein this same law was re-enacted intact in 1955. Changes made added the words "circuit judge or magistrate" in paragraph 1 and the word "careless" was substituted for the word "wanton" in subparagraph 1 of paragraph 1.

There was no change in the intent or purpose to cause the suspension of the licenses of careless and reckless drivers. The Legislature has taken a new look at an ever-changing situation. As the law stood in 1952, drivers could not be suspended for conviction occurring prior to January 1, 1952. As to convictions occurring subsequent to January 1, 1952, there is another situation. It is thought that the authorities, cited supra, sufficiently show that the constitutional inhibition against retrospective laws does not apply to drivers' laws which are enacted in furtherance of public safety. Two or three convictions of careless and reckless driving for which judgments and sentences have been meted out and satisfied, no matter how reprehensible, cannot be said to constitute a crime. It is merely a condition.

In Commonwealth vs. Harris, 278 Ky. 218, 128 S.W.(2d) 579, l.c. 580, it was stated by the Supreme Court of Kentucky as follows:

> "Our conclusion in the Burnett case(274 Ky. 231, 118 S.W. 2d. 560) that the suspension of a driving license 'does not add to his punish-

> ment; it merely prevents future violations of the law' is correct, and finds basis in application of sound principles of law, where under the police power exercised by the commonwealth, safety of life and property is the end to be gained."

It is believed that the above case states the law on this subject concisely. The suspension section of the drivers' license law is not an habitual criminal law. It is a safety device with the furtherance of the public safety as its purpose.

CONCLUSION

It is the opinion of this office that where an individual was convicted in June, 1956, of careless and reckless driving, and such individual had within two years prior to such time been convicted of careless and reckless driving, such individual's driving license is subject to suspension under the provisions of Section 302.281, RSMo Cum. Supp. 1955, providing for the suspension of a person who is an habitual reckless or negligent driver of a motor vehicle.

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

Yours very truly,

John M. Dalton
Attorney General

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Enc.(1) Opinion to
Harold W. Barrick)