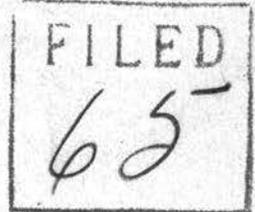


MOTOR VEHICLES: Jurisdiction of Commissioner suspended during pendency of appeal from order, cancelling, suspending or revoking driver's license. Further orders during this time void.

March 16, 1949

3-21



Honorable Walter L. Mulvania
Prosecuting Attorney of Atchison County
Rock Port, Missouri

Dear Mr. Mulvania:

This is in reply to the letter of recent date under the signature of yourself and Honorable S. F. Wier, Judge of the Magistrate Court of Atchison County, requesting the opinion of this department on the following question:

"Does the Supervisor of the Driver's License Registration of the Department of Revenue have the right to reinstate a suspended Driver's License before the matter has been determined by the Circuit Court in an appeal taken in the case under the provision of Section 8463 of the Revised Statutes of Missouri?"

The procedure by which an appeal may be taken from the order of the Commissioner of Motor Vehicles cancelling, suspending or revoking a driver's license is provided in Section 8463, Revised Statutes of Missouri, 1939. It is provided in said section that such appeal be taken to the Circuit Court in the county wherein the person affected resides.

The statutes are silent on the particular question under consideration. Further, we find no Missouri cases wherein this point is expressly decided. However, we submit that this matter is analogous with the ordinary appeals in courts of law and that the principles governing such appeals are applicable. On this point we cite 42 Am. Jur., "Public Administrative Law", Pages 677 and 678, Section 238, which is in part as follows:

"Depending upon the method in which relief from or review of administrative action is sought, the practice and procedure may be governed by the principles governing ordinary actions at law or in equity, by the principles governing an ordinary

appeal, or by particular statutory rules provided by the statutes governing review of the acts of individual agencies." * * *

The inferring of jurisdiction in case of appeal to the appellate court gives to the appellate court the exclusive power and authority over the subject matter of the appellate proceeding, and the authority of the lower court is suspended. The lower courts can not proceed in any manner so as to affect the jurisdiction acquired by the appellate court. The Supreme Court of Missouri in the case of State ex rel Callahan et al v. Hess, 153 S. W. (2nd) 713, sets out the rule on page 715 as follows:

"The rule invoked by relators is that an appeal divests the jurisdiction of the trial court and places it in the appellate court, and during the pendency thereof the court from which the appeal has been allowed has no power to render further decisions affecting the rights of the parties until the case has been remanded. Such is undoubtedly the general rule. State ex rel v. Sale, 153 Mo. App. 273, 133 S. W. 119; 2 Ency. of Pl. & Pr. 327; Foster's Adm'r v. Rucker's Ex'r, 26 Mo. 494; Ryans v. Boogher, 169 Mo. 673, 69 S. W. 1048."

This statement of the law is also found in State ex rel St. Charles Savings Bank vs. Hall, 12 S. W. (2nd) 91, 1. c. page 94, as follows:

"The judgment in the main case, to which it is said the injunction was an incident, was rendered at the February term, 1927, of the circuit court of the City of St. Louis, and the appeal was granted at that same term. Jurisdiction of such main case was thereby transferred to the Supreme Court, and the circuit court of the city of St. Louis thereupon parted with every vestige of jurisdiction it theretofore had over said case."

Further in Case vs. Smith, 257 S. W. 148, the Kansas City Court of Appeals made the following statement on Page 150:

"It is well settled that after an appeal has been allowed, the court from which the appeal has been allowed has no power to render further decision affecting the rights of the parties until the case has been remanded."

See also: Foster's Adm's v. Rucker's Ex'r, 26 Mo. 494, 1. c. 495; Harris et al vs. Chitwood, 210 Mo. 560, 1. c. 561.

While no Missouri cases involving administrative tribunals have been found on this point we cite two Texas cases in support of our conclusion. In 1936 the court of civil appeals of Texas ruled that the Public Service Commission loses jurisdiction over an order thereof when attacked by appeal to the District Court and is without authority to take any action thereon while such suit is pending. Railroad Commission of Texas vs. North Texas Coach Company, 92 S. W. (2nd) 268. Later in 1945 the same court held in the case of Chenoweth vs. Railroad Commission, 184 S. W. (2nd) 711, that when a suit is brought to test the validity of the Railroad Commission's order the Commission loses jurisdiction over the subject matter of the order during the pendency of the suit.

In view of the foregoing we believe that Section 8463, supra, in providing that when a person appealing files a petition for a hearing in the circuit court in the county wherein such person resides "such court is hereby vested with jurisdiction" can only mean that such circuit court has sole jurisdiction in the matter until a decision is reached on said appeal. We must give effect to this provision. Any other construction would nullify the intent and purpose of the statute. The Commissioner should proceed no further, but await the action of the court.

Generally, unauthorized proceedings in a lower court after jurisdiction has been acquired by the appellate court on appeal, are held to be void. This rule is recognized by the Supreme Court of Missouri in the case of Niedringhaus et al vs. Wm. Niedringhaus Insurance Company et al, 46 S. W. (2nd) 838, l. c. 843; and further by the St. Louis Court of Appeals in Schramm vs. Kraeuchi et al, 156 S. W. (2nd) 374, where it was said at pages 375 and 376:

"We have no record before us here to show what proceedings were had in the cause in the court below subsequent to the granting of the appeal, and we do not see how such subsequent proceedings could be properly brought before us for review on this appeal. It would seem that our disposal of the appeal must be made in view of the status of the cause as it existed at the time of the granting of the appeal. Subsequent proceedings in the court below cannot be permitted to interfere with such disposal of the appeal as this court may deem just and proper. If the court below, subsequent to the granting of the appeal, entered any judgment or order, which, being permitted to stand, would preclude a proper disposal of the matter involved in the appeal as directed by this court, then such judgment or order is a nullity for want of jurisdiction, and must necessarily be set aside by the court below merely for the asking."

In view of these decisions we believe that further orders of the Commissioner, after an appeal has been taken, which interfere with the disposal of such appeal by the court are void.

CONCLUSION

Therefore, it is the opinion of this department that when an appeal is taken to the circuit court from an order of the Commissioner of Motor Vehicles as provided in Section 8463, Revised Statutes of Missouri, 1939, the jurisdiction of said Commissioner is suspended and he is without authority to take further action while such appeal is pending. It is also the opinion of this department that further orders of said Commissioner during the pendency of such appeal are void and of no effect.

Respectfully submitted,

DAVID DONNELLY
ASSISTANT ATTORNEY GENERAL

APPROVED:

J. E. TAYLOR
ATTORNEY GENERAL