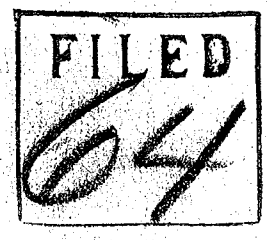
MOTOR VEHICLES:
REVOCATION OR SUSPENSION
OF DRIVER'S LICENSE:

The Director of Revenue does not have authority to revoke a motor vehicle driver's license under Section 302.271, V.A.M.S. 1949, where such person has been convicted of careless driving only; or to suspend such driver's license under Section 302.281, V.A.M.S. 1949, where such person has pleaded guilty or has been convicted of careless and reckless driving.



September 22, 1954

Honorable M. E. Morris
Director, Department of Revenue
Jefferson City, Missouri

Dear Mr. Morris:

This will be the opinion you requested by letter asking if the Director of Revenue has authority to revoke an operator's or chauffeur's license under Subparagraph (7) of Section 302.271, V.A.M.S. 1949, where the licensee has been involved in an accident which resulted in the death of another person, if such licensee has been convicted of careless driving only, and whether the Director has the authority to suspend an operator's or chauffeur's license under Section 302.281, V.A.M.S. 1949, Subparagraph(1), where the licensee has pleaded guilty or has been convicted of careless and reckless driving.

Your letter reads as follows:

> "We would appreciate having an opinion for our Driver's License Division concerning the following questions:
>
> "(1) Do we have authority to revoke an operator's or chauffeur's license under Section 302.271, sub-paragraph 7, where the person has been involved in an accident which resulted in the death of another person if he has been convicted on careless driving only?
>
> "(2) Do we have authority to suspend an operator's or chauffeur's license under Section 302.281, sub-paragraph 1, where

> the person has pleaded guilty or been convicted of careless and reckless driving?"

Section 302.271, including Subsection (7) thereof, and Section 302.281, including Subsection (1) thereof, referred to in your request, read, respectively, in part, as follow:

> "The director shall forthwith revoke the license of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction of any of the following offenses, when such conviction has become final:
>
> * * * * * * * * * * * * * *
>
> "(7) Any offenses involving the wanton and reckless operation of a motor vehicle which has resulted in the death of another."
>
> <u>Sec. 302.281</u>
>
> "1. The director 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:
>
> "(1) Has caused the death or personal injury of another or serious property damage by his wanton and reckless operation of a motor vehicle;"

The St. Louis Court of Appeals in City of St. Louis vs. Mosier, 223 S.W.(2d) 117, held that a motor vehicle driver's license may be revoked only as provided by law. The court said, l.c. 119:

> "While it is recognized that a driver's license amounts to no more than a personal privilege extended to the operator of a motor vehicle by the state or municipal authorities, such a license, once granted, is nevertheless not to be revoked arbitrarily, but only in the manner and on the grounds provided by law."

This means that such driver's license may only be revoked (or suspended) upon some lawful grounds provided by law, that is, for the doing of some act, or the failure to do some act which is prohibited from being done or required to be done, as the case may be, by statute. If the prohibited act be a criminal offense it must be described and defined by the statute in definite terms and language as a criminal offense.

It would not matter to what act a person would plead guilty or be convicted of as a basis of the suspension or revocation of his motor vehicle driver's license such conviction or plea would have no force or effect unless that act is defined by statute as a criminal offense. In setting forth what constitutes a criminal act a statute must set forth the facts constituting the crime with such certainty that the defendant may have notice of what he is called upon to meet and controvert and that the court, applying the law to the facts charged, may say that an offense has been committed. Nothing may be left to guess work or implication.

The Supreme Court of this state in State v. Bartley, 304 Mo. Rep. 58, l.c. 62, ruling on this question said:

> "* * *Criminal statutes are to be construed strictly; liberally in favor of the defendant and strictly against the State, both as to the charge and the proof. No one is to be made subject to such statutes by implication. Where one class of persons is designated as subject to its penalties, all others not mentioned are exonerated. (State v. Jaeger, 63 Mo. 403, 409; State v. Gritzner, 134 Mo. 512, 527; State ex rel. v. State Board of Health, 288 Mo. 659, 671, 232 S.W. 1031; State v. McMahon, 234 Mo. 611, 137 S.W. 872.) Such statutes are not to be 'extended or enlarged by judicial construction so as to embrace offenses or persons not plainly written within their terms.' * * *"

Said Section 302.271 and Section 302.281, in providing for the exercise of the power of revocation or suspension, respectively, of a motor vehicle driver's license by the Director of Revenue, predicate such authority on the fact as stated in Subsection (7) of said Section 302.271, that the operator or chauffeur of such motor vehicle has been convicted of "any offense involving the wanton and reckless operation of a motor vehicle which has resulted in the death of another" or under Subsection (1) of said Section 302.281 that the operator or chauffeur of a motor vehicle "has caused the death or personal injury of another, or serious property

damage by his wanton and reckless operation of a motor vehicle."

Neither the "wanton and reckless operation of a motor vehicle, which has resulted in the death of another" as set forth in Subsection(7) of said Section 302.271, nor the "wanton and reckless operation of a motor vehicle" as set forth in Subsection (1) of said Section 302.281, are defined or made criminal offenses by the statutes of this state. The power to define and pronounce any act upon the part of any person to be a criminal offense is vested solely in the legislative branch of the state government. The Legislature of this state has not given the Director of Revenue any authority under the provisions of said sections to determine whether the operator or chauffeur of a motor vehicle was engaged in "the wanton and reckless operation of a motor vehicle which has resulted in the death of another" under said section 302.271, or to determine whether such operator or chauffeur of such vehicle was engaged in "wanton and reckless operation of a motor vehicle" under the provisions of said Section 302.281. A conviction of the operator or chauffeur of a motor vehicle of wanton or reckless operation of a motor vehicle under said section, or a conviction for the wanton and reckless operation of a motor vehicle under Section 302.281, being acts not made criminal offenses by statute, would have no force or effect and would not, and do not, constitute lawful grounds for the suspension or the revocation of the motor vehicle driving license of such operator or chauffeur under any of the terms of the said Sections 302.271 or 302.281, V.A.M.S. 1949. If there is no crime committed by, or charged against, such operator or chauffeur of a motor vehicle there cannot be a valid conviction for such acts.

CONCLUSION

It is, therefore, considering the premises, the opinion of this office that:

1) Under the terms of Subparagraph (7) of Section 302.271, of the Revised Statutes of this state, 1949, the Director of Revenue does not have authority to revoke the driver's license of an operator or chauffeur of a motor vehicle where such person has been convicted of careless driving only;

2) That under the terms of Subparagraph (1) of Section 302.281 of the Revised Statutes of this state, 1949, the Director of Revenue is not authorized to suspend the driver's license of an operator or chauffeur of a motor vehicle where

Hon. M. E. Morris

such person has pleaded guilty to or has been convicted of careless and reckless driving.

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

Very truly yours,

JOHN M. DALTON
Attorney General

GWC:mw