

STATE HIGHWAY PATROL:

Members may serve police demand order for surrender of license and registration at locations other than on a public highway and the acceptance of voluntary surrender of license to a member of the patrol does not constitute a seizure within Senate Bill No. 7 of the 69th General Assembly.



July 3, 1958

Col. Hugh H. Waggoner
Superintendent, Missouri State
Highway Patrol
State Office Building
Jefferson City, Missouri

Dear Col. Waggoner:

We have received your request for an opinion of this office, which request is as follows:

"Senate Bill No. 7 which was passed by the Second Extra Session of the 69th General Assembly provides that members of the patrol shall have the power of search and seizure on a public highway of this state. This bill also provides that the superintendent of the patrol shall post a bond in the sum of fifty thousand dollars conditioned upon the payment to persons injured of all damages arising out of any unlawful search, seizure or arrest made by any member of the patrol.

"Section 303.330 of 'The Motor Vehicle Safety Responsibility Law' provides that if any person shall fail to return to the Director the license or registration which has been suspended, the Director shall forthwith direct the Missouri State Highway Patrol or any peace officer to secure possession thereof and to return the same to the Director.

"The Director, acting under the authority of Section 303.330, sends to us numerous

Col. Hugh H. Waggoner

'Police Demand Orders' directing us to secure the license plates and/or operator's and chauffeur's licenses of persons suspended by him. In order for our officers to serve these Police Demand Orders and secure the licenses it is necessary that the licensee be contacted at his home or place of employment. Since these Police Demand Orders are not served, and the licenses secured, on a public highway, we would appreciate receiving an official opinion on the following questions:

1. Can a member of the patrol legally serve a Police Demand Order and secure the licenses at any location not on a public highway?

2. If the licensee voluntarily surrenders his licenses to a member of the patrol upon presentation of a Police Demand Order, does this constitute a seizure under Senate Bill No. 7?"

In answering your first question, we are assuming that possession is secured in the manner described in your second question, i.e., voluntary surrender of the license by the licensee upon presentation of the police demand order. Upon such assumption, it appears that both questions may be considered together. Furthermore, in such circumstances the question becomes one of statutory construction, and constitutional questions relating to unreasonable searches and seizures are not involved inasmuch as a voluntary surrender is not a seizure within the meaning of the constitutional provisions relating thereto. 79 C.J.S., Searches and Seizures, Section 1, page 76.

As a matter of statutory construction, the problem becomes primarily one of ascertaining the legislative intent in the enactment of Senate Bill No. 7 of the 69th General Assembly, Second Extra Session, as that bill relates to Section 303.330, RSMo, 1957 Cum. Supp.

Senate Bill No. 7 of the 69th General Assembly, Second Extra Session, repealed and re-enacted Section 43.200, RSMo 1949. The first subparagraph of that enactment, with which we are here concerned, provides as follows:

Col. Hugh H. Waggoner

"1. The members of the patrol shall not have the right or power of search nor shall they have the right or power of seizure except to take from any person under arrest or about to be arrested deadly or dangerous weapons in the possession of such person, and except that the members of the patrol shall have the power of search and seizure on a public highway of this state."

Section 303.330, RSMo, 1957 Cum. Supp., provides as follows:

"Any person whose license or registration shall have been suspended as herein provided, or whose policy of insurance or bond, when required under this chapter, shall have been canceled or terminated, or who shall neglect to furnish other proof upon request of the director shall immediately return his license and registration to the director. If any person shall fail to return to the director the license or registration as provided herein, the director shall forthwith direct the Missouri state highway patrol or any peace officer to secure possession thereof and return the same to the director."

"(O)ne of the accepted canons of statutory construction permits and often requires an examination of the historical development of the legislation, including changes therein and related statutes." State ex rel. Klein v. Hughes, 351 Mo. 651, 173 SW2d 877, 879(3). The history of the two statutory provisions here involved is, we feel, quite enlightening in considering your inquiry. Section 43.200, RSMo 1949, was originally enacted in 1931 as part of the original bill establishing the State Highway Patrol. As Section 16 of an act found in Laws of Missouri, 1931, page 230, it provided:

"The members of the patrol shall not have the right or power of search nor shall they have the right or power of seizure except to take from any person under arrest or about to be arrested deadly or dangerous weapons in the possession of such person."

Col. Hugh H. Waggoner

Until the enactment of Senate Bill No. 7 of the 69th General Assembly, Second Extra Session, the provision remained unchanged from its original enactment appearing, as mentioned above, in the 1949 Revised Statutes as Section 43.200.

That section had been considered by the courts and had been held absolutely to prohibit searches and seizures by members of the State Highway Patrol even in circumstances where no constitutionally prohibited searches and seizures were involved. *State v. Smith*, 357 Mo. 467, 209 SW2d 138, decided in 1948.

What is now Section 303.330, RSMo, 1957 Cum. Supp., was originally enacted in 1953, Laws of Missouri, 1953, page 569, 585. At that time, the General Assembly, in imposing upon the members of the Highway Patrol the duty of "securing possession" of licenses and registration, was presumably aware of the construction placed upon Section 49.200 by the courts. Inasmuch as insofar as any "securing possession" authorized by Section 303.330 did not involve an unreasonable seizure in a constitutional sense (*Star Square Auto Supply Co. v. Gerk*, 325 Mo. 968, 30 SW2d 447), the General Assembly was quite free to relax insofar as it saw fit the limitations which it had imposed upon the Highway Patrol by Section 43.200. We are thus led to conclude that, in enacting Section 303.330, the Legislature either did not consider the action there authorized a seizure within the meaning of Section 43.200 or intended to make any seizure authorized by Section 303.330 a special exception to the general limitation upon the patrol's power of search and seizure. As a special statute, Section 303.330 would have been effective insofar as any conflict between it and the pre-existing general Section 43.200 was concerned. *State ex rel. City of Springfield v. Smith*, 344 Mo. 150, 125 SW2d 883.

Such was the situation at the time of the enactment of Senate Bill No. 7, here involved. The duty had been imposed upon the patrol to "secure possession" of licenses and registration in circumstances authorized under Section 303.330, regardless of the almost absolute prohibition against searches and seizures by the patrol which the General Assembly had likewise applied. In enacting Senate Bill No. 7, the purpose of the General Assembly was in nowise to limit further the search and seizure power of the patrol, but the purpose was rather to extend such powers. Such purpose is obvious from the language of the bill itself and may also be found in the Special Message of the Governor proposing to the General Assembly the amendment of Section 43.200. Senate Journal, 69th General Assembly, Second Extra Session, Fourth Day - Wednesday, February 12, page 47.

Col Hugh H. Waggoner

It is thus obvious that Senate Bill No. 7 extended the power of the patrol and there is no indication to be found that the General Assembly intended to curtail or remove from the patrol any of the other duties which had been imposed upon it, including the duty under Section 303.330. To assert that the General Assembly, in extending the power of the patrol, generally, intended at the same time to limit and restrict the authority previously granted the patrol by the General Assembly in a particular field would produce an absurd result which the General Assembly would not have intended, and the legislation should therefore not be so construed. *Mammel v. Thomas*, 238 Mo. App. 403, 181 SW2d 168. Such construction likewise accords with the general rule of legislative construction that a subsequent general act does not operate to repeal by implication a special statute unless there is a manifest repugnancy between the general and special statutes, which we fail to find here. *Hurlburt v. Bush*, 284 Mo. 397, 224 SW 323.

Therefore, we conclude that the General Assembly, in enacting Senate Bill No. 7 of the 69th General Assembly, Second Extra Session, did not intend to limit the authority previously conferred upon members of the Highway Patrol to "secure possession" of licenses and registration under Section 303.330, RSMo, 1957 Cum. Supp.

This conclusion is limited to the circumstances referred to in your opinion request, wherein the licensee voluntarily surrenders his license upon presentation of the so-called police demand order. A further and perhaps more difficult question would arise in determination of the authority of a member of the Highway Patrol to seize the license upon the refusal of the licensee involved to surrender his license upon presentation of the police demand order. That matter, however, will not be gone into at this time.

CONCLUSION

Therefore, it is the opinion of this office that a member of the Missouri State Highway Patrol may legally serve a so-called police demand order requiring a person whose license or registration shall have been suspended for noncompliance with the Motor Vehicle Responsibility law to surrender such license and may accept the voluntary surrender thereof from the licensee at any location, whether or not it be on a public highway.

It is the further opinion of this office that the voluntary surrender of the license by the licensee to a member of the

Col. Hugh H. Waggoner

patrol upon the presentation of a police demand order does not constitute a seizure within Senate Bill No. 7 of the 69th General Assembly, Second Extra Session.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Robert R. Welborn.

Yours very truly,

JOHN M. DALTON
Attorney General

RRW:ml