

DRIVER'S LICENSES:
LICENSES:
SUPREME COURT RULES:
CHANGE OF VENUE:
APPEALS:
DIRECTOR OF REVENUE:

That Section 564.444 RSMo Supp. 1967, is civil in nature. Supreme Court Rule 41.02 is explicit in directing that the Rules of Civil Procedure shall govern civil practice and procedure in the Circuit Courts. The Rules of Civil Procedure provide for change of venue and appeal.

It is our opinion that the Director of Revenue can apply for a change of venue or take an appeal in accordance with the provisions of the Rules of Civil Procedure in matters of judicial review of an order of revocation of a drivers license because of refusal to submit to a breath test issued under the provisions of Section 564.444.

March 25, 1969

OPINION NO. 24

Honorable Lawrence O. Davis
Prosecuting Attorney
Franklin County
Post Office Box 229
Court House
Union, Missouri



Dear Mr. Davis:

This letter is in response to your request for an opinion as to procedure in matters of judicial review of an order of the Department of Revenue revoking a driver's license under Section 564.444 RSMo Supp. 1967, because of a refusal to submit to a chemical breath test.

Your question regards proceedings for judicial review under the provisions of Section 564.444 which would be filed in a Court of record, in this instance a Circuit Court.

Your specific question is as follows:

"My question is whether or not the Director of Revenue can appeal an adverse decision or apply for a change of venue as in ordinary proceedings?"

The answer to this question is, "yes." The Director of Revenue can appeal an adverse decision or apply for a change of venue.

Provision for judicial review of an order of the Department of Revenue revoking a driver's license under Section 564.444 is stated in paragraph two thereof as follows:

"If a person's license has been revoked because of his refusal to submit to a chemical test, he may request a hearing before a court of record in the county in which he resides or in the county in which the arrest occurred. Upon his request the clerk of the court shall notify the prosecuting attorney of the county and the prosecutor shall appear at the hearing on behalf of the arresting

Honorable Lawrence O. Davis

officer. At the hearing the judge shall determine only:

1. Whether or not the person was arrested.
2. Whether or not the arresting officer had reasonable grounds to believe that the person was driving a motor vehicle while in an intoxicated condition.
3. Whether or not the person refused to submit to the test."

Sections 564.441 through 564.444 are civil in nature. They provide a method whereby an operator's driving license may be suspended or revoked for refusal to submit to a sobriety test and for judicial review of such administrative action. See Blydenburg vs. Thomas A. David, Director of the Department of Revenue, 413, SW 2nd 284.

Supreme Court Rule 41.02 provides in part as follows:

"Unless otherwise hereafter provided by statute, the Rules of Civil Procedure shall govern the practice and the procedure in all suits and all proceedings of a civil nature, legal, equitable and special in the following courts: Supreme Court, Courts of Appeals, Circuit Courts, and Courts of Common Pleas."

"The language of Civil Rule 41.02 is explicit in directing that the rules of Civil Procedure shall govern practice and procedure in all suits and all proceedings of a civil nature, legal, equitable and special. We are convinced that the intention of the Supreme Court in establishing this rule was to bring into application in special proceedings those Civil Rules it was simultaneously establishing which were consistent with such proceedings and not repugnant to them." State of Missouri v. Hon. J. Doerr Ewing, 404 SW 2nd 433.

Civil proceedings in the Circuit Courts are to be governed by the Rules of Civil Procedure, Civil Rules 41, through 102, inclusive. These rules make provision for appeal and change of venue. It is our opinion that there is no provision in Section 564.444 or elsewhere in the statutes which would exclude judicial review of an order issued under the provisions of Section 564.444 from being governed by the provisions of the Rules of Civil Procedure, providing for appeal and change of venue.

CONCLUSION

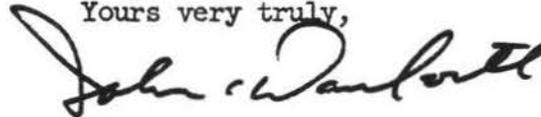
Therefore, it is the opinion of this office that Section 564.444 RSMo Supp. 1967, is civil in nature. Supreme Court Rule 41.02 is explicit in directing that the Rules of Civil Procedure shall govern civil practice and procedure in the Circuit Courts. The Rules of Civil Procedure provide for change of venue and appeal. It is our opinion that the Director of Revenue can apply for a change of venue or take an appeal in accordance with the pro-

Honorable Lawrence O. Davis

visions of the Rules of Civil Procedure in matters of judicial review of an order of revocation of a driver's license because of refusal to submit to a breath test issued under the provisions of Section 564.444.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Joe R. Ellis.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth". The signature is written in black ink and is positioned above the typed name.

JOHN C. DANFORTH
Attorney General