

MOTOR VEHICLE OPERATORS' LICENSES:

Director of Revenue does not have authority to set aside revocation or suspension of motor vehicle operator's licenses.

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John M. Dalton

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John C. Johnsen

Filed No. 64

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



Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

"In accordance with the provisions of Chapter 302, R. S. Mo. 1949, this Department revokes Motor Vehicle Operators' licenses for various periods of time.

"The form now in use states that the action is 'for not less than one year', etc. The question we wish to present is whether or not we have authority to reinstate the licenses so suspended or revoked prior to the time stated in the original order.

"A copy of the blank now in use is enclosed.

"For your information, in some instances, we have the recommendation from the judge in whose court the conviction was obtained and, in others, we have the recommendation of the Prosecuting Attorney and arresting officer."

This inquiry squarely presents the question of the authority of an administrative officer to set aside or

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modify action previously lawfully taken pursuant to a statute imposing duties both of a discretionary and non-discretionary nature upon such officers.

The general rule with respect to the power of administrative officers to reconsider or to modify an official action previously taken is stated thus in Sections 287.290 and 292, Vol. 46, C. J., "Officers";

"In addition to powers expressly conferred upon him by law, an officer has by implication such powers as are necessary for the due and efficient exercise of those expressly granted, or such as may be fairly implied therefrom. But no powers will be implied other than those which are necessary for the effective exercise and discharge of the powers and duties expressly conferred and imposed, and where the mode of performance of ministerial duties is prescribed, no further power is implied."

further, in Section 290, page 1033, it is said:

"Powers conferred upon a public officer can be exercised only in the manner, and under the circumstances, prescribed by law, and any attempted exercise thereof in any other manner or under different circumstances is a nullity."

and in Section 292, page 1033, it is said:

"In the absence of statutory authority, an officer in performing a statutory duty which does not involve the exercise of discretion is without the power of amendment; and when the judgement or discretion of an executive officer has been completely exercised in the performance of a specific duty, the act performed is beyond his review or recall,

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although the statute conferring authority expressly makes his determination discretionary."

This law clearly discloses that having once exercised the duties and authority conferred upon an administrative officer by law, such officer may not, thereafter, reconsider, modify, or set aside official action so taken. We are further persuaded to this view by virtue of the enactment of the Administrative Review Act by the General Assembly providing for the judicial review of actions taken by administrative officers, commissioners and other agencies exercising similar functions. This statutory provision for review has been enacted pursuant to the mandate contained in Section 22, Article V., Constitution of Missouri, 1945, and reads as follows:

"All final decisions, findings, rules and orders of any administrative officer or body existing under the Constitution or by law, which are judicial or quasi-judicial and affect private rights, shall be subject to direct review by the courts as provided by law; and such review shall include the determination whether the same are authorized by law, and in cases in which a hearing is required by law, whether the same are supported by competent and substantial evidence upon the whole record."

Having, thereby, provided a scheme for the judicial review of administrative acts, it is our thought that such method is exclusive and the only method by which such act may be modified or set aside.

What has been said heretofore, is, we believe, equally applicable to both officials acts of a discretionary and of a non-discretionary nature.

We note that accompanying your letter of inquiry there was included a form of "Order Of Suspension Or Revocation Of Privileges To Operate Motor Vehicle In The State Of Missouri". It is our thought that any order to suspend should not be for an indeterminate period, but, on the contrary, should be for some definite fixed period within the maximum limits applicable.

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CONCLUSION

In the premises, we are of the opinion that the Director of Revenue is without authority to reconsider, modify, or set aside a valid order of suspension or revocation of a motor vehicle operator's license after having duly entered the same.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Will F. Berry, Jr.

Very truly yours,

JOHN M. DALTON
Attorney General