

MOTOR VEHICLE COMMISSIONER: Motor Vehicle Commissioner
cannot reopen, set aside or
SECRETARY OF STATE: change decision after driver's
license has been revoked or
suspended.

June 13, 1945



Honorable E. J. McKee
Motor Vehicle Commissioner
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your letter of
May 21, 1945, in which you request an opinion, as fol-
lows:

"It has been the custom of this
department in the past to lift sus-
pensions of driver's licenses upon
the recommendation of the Justice
of Peace or Judge who sentenced the
individual where the suspension was
for less than one year.

"It is the desire of this department
to have your opinion on this proce-
dure. Does or does not the Motor
Vehicle Commissioner have such author-
ity?"

The Statutes of Missouri pertaining to the revocation
and suspension of operators', registered operators', or
chauffeurs' licenses vest the authority to carry out these
statutory provisions in an officer appointed by the Secre-
tary of State, and designated as the Motor Vehicle Commis-
sioner.

The Motor Vehicle Commissioner derives his authority
to revoke or suspend operators', registered operators', or
chauffeurs' licenses only after conviction in court and
pursuant to the provisions of Sections 8457, 8458, 8459,
8460, and 8461, R. S. Mo. 1939. These sections provide as
follows:

Sec. 8457.

"(a) The privilege of driving a motor vehicle on the highways of this State given to a nonresident hereunder shall be subject to suspension or revocation by the commissioner in like manner and for like cause as an operator's, registered operator's or chauffeur's license issued hereunder may be suspended or revoked.

"(b) The commissioner is further authorized, upon receiving a record of the conviction in this State of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this State, to forward a certified copy of such record to the motor vehicle administrator in the State wherein the person so convicted is a resident."

Sec. 8458.

"The commissioner is authorized to suspend or revoke the license of any resident of this State upon receiving notice of the conviction of such person in another State of an offense therein which, if committed in this State, would be grounds for the suspension or revocation of the license of an operator or chauffeur."

Sec. 8459.

"(a) Whenever any person is convicted of any offense for which this article makes mandatory the revocation of the operator's, registered operator's or chauffeur's license of such person by the commissioner, the Court in which such conviction is had shall require

the surrender to it of all operator's, registered operator's and chauffeur's State licenses, certificates or badges then held by the person so convicted and the court shall thereupon forward the same together with a record of such conviction to the commissioner.

"(b) Every court having jurisdiction over offenses committed under this article or under the provisions of any statute of this State regulating the operation of motor vehicles on highways, or any felony in the commission of which a motor vehicle is used, shall forward to the commissioner a record of the conviction of any person in said court for a violation of any of said laws, and every such court, except justice of the peace courts, and courts of criminal correction in the City of St. Louis shall have the power of suspending or revoking the license of any licensee under this article or the certificates of registered chauffeurs or registered operators under Sections 8372 and 8373, and amendments thereto, and shall certify to the commissioner a record of such suspension or revocation. Every justice of the peace and each judge of the courts of criminal correction of the City of St. Louis shall forward to the commissioner a record of the conviction of any person in his court for a violation of any of said laws for which he shall receive a fee of fifty cents to be taxed as costs in the case, and may recommend to the commissioner a suspension or revocation of said person's license or the certificate of such chauffeur or registered operator. The commissioner may suspend or revoke the license or certificates of any of the persons convicted as aforesaid."

Sec. 8460.

"The commissioner shall forthwith revoke the license of any operator, registered operator or chauffeur upon receiving a record of such operator's, registered operator's or chauffeur's conviction of any of the following offenses, when such conviction has become final:

"1. Manslaughter (or negligent homicide) resulting from the operation of a motor vehicle;

"2. Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug;

"3. Any felony in the commission of which a motor vehicle is used."

Sec. 8461.

"The commissioner shall not suspend a license for a period of more than one year and upon revoking a license shall not in any event grant application for a new license until the expiration of one year after such revocation."

These five sections are the only provisions of the driver's license law which prescribe the duties and powers of the Motor Vehicle Commissioner with reference to revoking or suspending licenses, except for Section 8463, R. S. Mo. 1939, which gives a person denied a license, or whose license has been cancelled, suspended, or revoked by the Commissioner, except where such cancellation or revocation is mandatory under the provisions of the driver's license law, the right to file a petition for hearing in the circuit court to determine whether the petitioner is entitled to a license or is subject to suspension, cancellation or revocation of license under the provisions of the driver's license law. Section 8463 provides as follows:

"Any person denied a license or whose license has been canceled, suspended, or revoked by the commissioner except where such cancelation or revocation is mandatory under the provisions of this article shall have the right to file a petition within thirty (30) days thereafter for a hearing in the matter in the Circuit Court in the county wherein such person shall reside and such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon reasonable notice, in writing, to the commissioner, and thereupon to take testimony and examine into the facts of the case and to determine whether the petitioner is entitled to a license or is subject to suspension, cancelation, or revocation of license under the provisions of this article. It shall be the duty of the prosecuting attorney of each county and of the City of St. Louis to represent the commissioner at such hearings."

It is from the above provisions that we must determine the correct answer to your question. The Motor Vehicle Commissioner holds an office created by statute, and the officer holding such office must find his authority to act in the statutes. It is apparent here that the statutes do not directly give the Motor Vehicle Commissioner the authority to lift suspensions of drivers' licenses previously suspended.

In 48 C. J., Sec. 237, page 1032, it is said:

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

Applying these excerpts from Corpus Juris to the present question, we see that the Legislature has prescribed the mode in which a licensee is to be punished for violation of the law, that is, revocation or suspension of his license by the Motor Vehicle Commissioner. Thus, "no further power can be implied," but he must exercise this power "only in the manner * * * prescribed by law." When a person is convicted of any offense for which the driver's license law makes mandatory the revocation of the operator's, registered

operator's, or chauffeur's license by the Commissioner, the court requires the surrender to it of all operators', registered operators', and chauffeurs' State licenses, certificates or badges then held by the person so convicted, and thereupon forwards the same, together with a record of such conviction, to the Commissioner of Motor Vehicles. In these cases the Commissioner must forthwith revoke the license of the person convicted. In other cases, except for the offenses set out in Section 8460, supra, the court having jurisdiction of offenses committed under the driver's license law, or under the provisions of any statute of this State regulating the operation of motor vehicles on highways, forwards to the Commissioner a record of the conviction of any person in said court for violation of any of said laws, and every such court, except justice of the peace courts, and courts of criminal correction in the City of St. Louis, has the power of suspending or revoking the license of any licensee under the driver's license law, or the certificates of registered chauffeurs and registered operators under Sections 8372 and 8373, R. S. Mo. 1939, and amendments thereto. In the justice of the peace courts and courts of criminal correction of the City of St. Louis the court forwards to the Commissioner a record of the conviction of any person in his court for a violation of any of said laws, and recommends to the Commissioner a suspension or revocation of said person's license or the certificate of such chauffeur or registered operator. The Commissioner of Motor Vehicles then, in his discretion, may suspend or revoke the license or certificate of any of the persons convicted as aforesaid in the justice of the peace courts or courts of criminal correction of the City of St. Louis.

Only in the cases not made mandatory under Section 8460, supra, where the person is convicted in a justice of the peace court or court of criminal correction of the City of St. Louis, does the Commissioner ever have any power of discretion in the suspending or revoking of drivers' licenses, or registered operators' or chauffeurs' licenses. And, in these special cases where the Motor Vehicle Commissioner has completely exercised his judgment or discretion in the performance of his specific duty - that of revoking or suspending - "the act is beyond his review or recall." Further, in Section 8463, supra, the Legislature has specifically provided a method of petitioning the circuit court to examine the facts of the case, as to whether the Motor Vehicle Commissioner has abused his discretion, and to determine whether the petitioner is entitled to a license or

Hon. E. J. McKee

(8)

June 13, 1945

is subject to a suspension, cancellation or revocation of his license under the provisions of the driver's license law. This section provides the exclusive remedy to be followed after the Motor Vehicle Commissioner has acted.

CONCLUSION

Therefore, it is the opinion of this department that once the Motor Vehicle Commissioner has revoked or suspended a driver's, registered operator's, or chauffeur's license, he no longer has any power or authority to reopen, set aside, or change said order except in compliance with an order of the circuit court under Section 8463, R. S. Mo. 1939.

Respectfully submitted,

A. V. OWSLEY
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APPROVED:

J. E. TAYLOR
Attorney General

AVO:CP