

MAGISTRATE COURTS: Magistrate Courts have^{no.} authority
AUTOMOBILES: to suspend or revoke license on
misdemeanor conviction.

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Honorable James D. Clemens
Prosecuting Attorney
Pike County
Bowling Green, Missouri

Dear Sir:

This acknowledges your request, which is as follows:

"I would like to have your opinion upon the following question:

"Is a Magistrate authorized to suspend or revoke the driver's license of a person convicted before him for the violation of statutory provisions regulating the operation of motor vehicles?"

"I sense a conflict between Sections 8459 (b) Mo. R.S.A., which appears to grant the privilege of revocation to all courts except Justice of the Peace courts, and Section 656.1 Laws 1945, which provides that the word 'justice' shall be deemed to refer to 'magistrate.'

"A defendant now stands charged in this county with operating a motor vehicle without a driver's license. His driver's license was suspended previously by a magistrate. For this reason, I would appreciate having your opinion at the earliest possible date."

Replying thereto, we understand your inquiry to be based upon the following facts: A person's driver's license

has been suspended by a magistrate; thereafter, and while the same was under the magistrate's judgment suspended, the person continued to drive his car during the suspension and has been arrested and awaits trial for operating his automobile without a driver's license.

In order to answer your question it is necessary to consider several statutes. Section 656.1, Mo. R.S.A., page 12 of the Pocket Part (Laws 1946), is as follows:

"Whenever, in any statute, the word 'justice' (referring to justice of the peace) or the words 'justice of the peace' appear, said word or words shall hereafter be deemed to include and refer to 'magistrate,' unless there be something in the subject or context repugnant to such construction."

By its terms, the word "magistrate" is substituted where theretofore statutes enacted stated the "justice of the peace" had certain duties.

Section 6460, Mo. R.S.A., says "The Commissioner shall forthwith revoke the license" of the person upon receiving the record of the final conviction where the crime has been any one of the three following, to wit: (1) Manslaughter, etc., resulting from operation of a motor vehicle; (2) Driving same under influence of liquor or narcotics; (3) A felony in the commission of which a motor vehicle is used. The commissioner has no discretion where the offense comes within any one of the above three classes. It becomes his mandatory duty to revoke the license upon receipt of the record of final conviction.

Section 6465, Mo. R.S.A., provides that if a person drives a motor vehicle on the highways while his license is suspended, he is guilty of a misdemeanor. The statute says:

"Any person whose operator's, registered operator's or chauffeur's license, or driving privilege as a nonresident, has been canceled, suspended or revoked as provided in this article, and who drives any motor vehicle upon the highways of

this State while such license or privilege is canceled, suspended or revoked, shall be guilty of a misdemeanor."

Section 8459, Mo. R.S.A., Subdivision (a), prescribes the duty of the Court, when the defendant has been convicted of an offense for which it is the mandatory duty to revoke his license, to require the surrender of all the defendant's "State licenses, certificates or badges then held" by the defendant, and they, along with the record of conviction, shall be by the Court forwarded to the commissioner. Said Subdivision (a) deals with offenses arising to the dignity of felonies such as those described in Section 8460, supra, but does not deal with misdemeanors.

Subdivision (b) of Section 8459 first prescribes the duties of the Court "having jurisdiction over offenses committed under this article," etc., and they "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 such Court, except the justice of the peace court (magistrate), etc., shall have the power of suspending or revoking the license, etc., and shall tell the commissioner about it. The latter part of Subdivision (b) deals with the duties of the justice of the peace courts and courts of criminal correction, and states they "shall forward to the commissioner a record of the conviction * * * for a violation of any of said laws," and may recommend suspension or revocation of the license and the commissioner may, but is not required to, act accordingly.

It appears that prior to enactment of the magistrate's bills the justice of the peace court did not have power to suspend or revoke the license of a violator although such court did have the power to convict where the violation was a misdemeanor.

Section 8455, Mo. R.S.A., prescribes a list of acts which are misdemeanors, such as knowingly possessing a suspended driver's license. Such a crime could have been prosecuted before the justice of the peace courts prior to the enactment of the magistrate law, but the justice of the peace could not have suspended or revoked the license and could only forward the record to the commissioner and recommend suspension or revocation.

The first part of said Subdivision (b) of Section 8459 states: "Every court having jurisdiction over offenses" committed in three ways, to wit, (1) under this article, (2) under any statute regulating operation of motor vehicles on highways, and (3) any felony in the commission of which a motor vehicle is used. While justices of the peace had authority under the law to try misdemeanor cases involving a violation of the Driver's License Law, they could, with reference to suspending or revoking the license, go no further than recommending the same to the commissioner, and Section 656.1, supra, confers no greater rights on the magistrate court than the justice of the peace court had.

The next inquiry is, do the magistrate courts have greater power than the justice of the peace courts in this respect, and, if so, why and where is it stated.

Senate Bill No. 193 was enacted by the 1945 Legislature pursuant to the provisions of the new Constitution (See Sections 18, 19, 20 and 21 of Article V of the 1945 Constitution), and by the terms of said bill it took effect on January 1, 1947. Section 1 thereof provides as follows:

"Magistrates shall have concurrent original jurisdiction with the circuit court, coextensive with their respective counties in all cases of misdemeanors, except in cities having courts exercising exclusive jurisdiction in criminal cases, or as otherwise provided by law."

By the terms of said law, which became effective in Pike County on January 1, 1947, magistrate courts have concurrent original jurisdiction with the circuit courts as to misdemeanors in their county.

Senate Bill No. 193, by said quoted provision, confers no greater powers upon magistrate courts than had been conferred theretofore upon justice of the peace courts by Section 3804, R.S. Mo. 1939. Under the latter section justice of the peace courts had "concurrent original jurisdiction" over misdemeanors in such counties as Pike, and it would seem to follow that magistrate courts do not have any enlarged or greater jurisdiction over misdemeanors in counties such as Pike County than justice of the peace courts formerly had.

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Conclusion.

It is our opinion that the magistrate court in such counties as Pike County, Missouri, does not have authority to suspend or revoke a driver's license when the defendant has been convicted of a misdemeanor.

Yours truly,

DRAKE WATSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
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