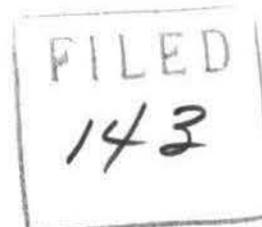


MOTOR VEHICLES: When the Director of Revenue receives notice of
LICENSES: forfeiture of collateral under Section 302.302,
 RSMo Supp. 1967, he must assess the appropriate
points. If notice is received that the forfeiture has been set aside
or vacated, the assessment of points based on that forfeiture of col-
lateral is a nullity and all records should be adjusted accordingly.
If after setting aside the forfeiture of collateral there is a con-
viction of the offense, the Director must, upon receipt of notice of
such conviction, assess points and take whatever additional action
that is called for by the assessment of such points.

April 1, 1970

OPINION NO. 143



Honorable James E. Schaffner
Director
Department of Revenue
Jefferson Building
Jefferson City, Missouri 65101

Dear Mr. Schaffner:

This is in reply to your request for an official opinion of this office concerning the dates used in determining the number of points accumulated for traffic violations and asking whether the points are to be awarded when there is a forfeiture of bail, or when a conviction follows when the forfeiture of bail is set aside and the person appears in court for trial.

Section 302.302, RSMo Supp. 1967, establishes a point system for purposes of suspension or revocation of a motor vehicle operator's license and reads in part as follows:

"1. The director of revenue shall put into effect a point system for the suspension and revocation of chauffeurs' and operator's licenses. Points shall be assessed only after a conviction or forfeiture of collateral. * * * "

Your question is what procedure to follow when notice is received of a forfeiture of collateral and then some months or years later notice is received that the forfeiture of collateral is set aside and a conviction has been entered for the same offense. The Department of Revenue has been assessing points on notice of forfeiture of collateral

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but has not been able to determine what it can do with the subsequent notice of conviction and setting aside of the forfeiture of collateral.

Section 302.304, RSMo Supp. 1967, provides for the suspension or revocation of a license depending on the accumulation of a certain number of points in a certain period of time. The procedure to be followed in the instant situation naturally would affect the application of Section 302.304.

The procedure to be followed also would affect the return of a license under Section 302.309, RSMo Supp. 1967, and the reduction of points under Section 302.306, RSMo Supp. 1967.

It is clear that under Section 302.302, the Director of Revenue must assess the appropriate points upon notice of forfeiture of collateral. See Pryor v. David, Mo., 436 S.W.2d 3.

Under the drivers' license law, Chapter 302, RSMo, forfeiture of collateral is the same as a conviction. Section 302.010(4), RSMo Supp. 1967; Pryor v. David, supra, l.c.5. Section 302.010(4) reads in part as follows:

"(4) 'Conviction', any final conviction; also a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction, * * * " (Emphasis added).

Forfeiture of collateral and the setting aside of the forfeiture for violation of state misdemeanor provisions involving motor vehicles is provided for in Supreme Court Rule 37.485 which reads in part as follows:

" * * *
"(b) If the person recognized does not appear before the magistrate according to the condition of the recognizance the magistrate shall record the default, but the default may be set aside by the magistrate on the appearance of the person recognized and for good cause shown, at any time to which the examination may be continued by the magistrate. * * * "

Therefore, it is our opinion that when the Director receives notice that forfeiture has been set aside or vacated, the assessment of points based on that forfeiture of collateral is a nullity and all records should be adjusted accordingly.

Of course, the license may have already suffered a suspension or revocation but the Department of Revenue has no power to alter that fact. It should be noted that the licensee brought the situation upon

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himself by forfeiting collateral.

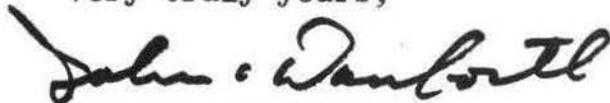
If after setting aside of forfeiture of collateral there is a conviction of the offense, it is our opinion that the Director must, upon receipt of notice of such conviction, assess points and take whatever additional action that is called for by the assessment of such points.

CONCLUSION

It is the opinion of this office that when the Director of Revenue receives notice of forfeiture of collateral under Section 302.302, RSMo Supp. 1967, he must assess the appropriate points. If notice is received that the forfeiture has been set aside or vacated, the assessment of points based on that forfeiture of collateral is a nullity and all records should be adjusted accordingly. If after setting aside the forfeiture of collateral there is a conviction of the offense, the Director must, upon receipt of notice of such conviction, assess points and take whatever additional action that is called for by the assessment of such points.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Walter W. Nowotny, Jr.

Very truly yours,



JOHN C. DANFORTH
Attorney General