

November 16, 1971

OPINION LETTER NO. 444
Answer by letter-Wieler

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



Dear Mr. Schaffner:

This is in response to your request for an opinion as to the force and effect of Section 302.307, recently enacted by the Missouri legislature (House Bill No. 264, 76th General Assembly). Section 302.307 provides:

"302.307. 1. Any other provision of law notwithstanding, any person who has, within sixty days before the date upon which he submits himself to be examined for a license to operate a motor vehicle, been released from active duty on honorable conditions in any of the armed forces of the United States, with two years of active service, and who, when so released, did not possess a license to operate a motor vehicle in this state because his license was then suspended because of point accumulation, may take the examination prescribed by this chapter even though his original license is suspended. He shall apply for and be examined in the same manner as any person first applies for a license in this state.

"2. Upon the successful completion of the examination the director shall issue a new license to the applicant and all accumulated points against the applicant shall be immediately removed so that his record will stand as if he was at this time being first licensed in this state."

Mr. James E. Schaffner

Your first question asks whether the provisions of Section 302.307 apply to those cases in which the driver's license of a discharged serviceman or servicewoman has been revoked rather than suspended because of point accumulation. In our view, it does not. The terms "revocation" and "suspension" have a definite meaning as used in the point accumulation system contained in the Driver's License Chapter. Section 302.304(2) provides for suspension of operating privileges when eight points have been accumulated in eighteen months for a period of not less than thirty nor more than ninety days, whereas Section 302.304(3) provides for revocation where twelve points have been accumulated in twelve months or eighteen points in twenty-four months or twenty-four points in thirty-six months. Section 302.309, sub. 1, provides for return of a suspended license to the operator or chauffeur immediately upon the termination of the period of suspension and upon compliance with the requirements of Chapter 303, RSMo, whereas Section 302.309, sub. 2, requires application for a new license in the manner prescribed by law on the part of one whose license has been revoked under the point accumulation system. Section 302.190 provides that application for a new license after revocation shall not be granted in any event until the expiration of one year after the date of revocation. Inasmuch as these terms have a special and distinct meaning within the context of the Driver's License Act, the provisions of Section 302.307 cannot be applied to those cases in which the driver's license of a discharged serviceman or servicewoman has been revoked because of point accumulation where such term is not used within the section.

In your second question, you ask whether the provisions of Section 302.307 apply to those cases in which the driver's license of a serviceman or servicewoman has been suspended under the provisions of Chapter 303, RSMo (Safety Responsibility Law), because of an accident, or a court judgment in an accident case. In our view, it does not. Section 302.307, sub. 1, specifically provides that the suspension must be as the result of point accumulation. This can only be as the result of point accumulation under the point system contained in Chapter 302, RSMo.

In your third question, you ask whether a person must be under suspension at the time of his release from two years active duty in the military service in order to be eligible for the examination and license under the provisions of Section 302.307. The answer to this question is yes. Section 302.307 specifically states that a serviceman is eligible for a driver's examination and license under the provisions of Section 302.307 when at the time of his release from the armed forces he did not possess a license to operate a motor vehicle in this state because his license was then suspended because of point accumulation. By its very terms, Section 302.307 would not apply to suspension for point accumulation to a serviceman still on active military duty, or to an ex-serviceman whose driving privilege was suspended subsequent to his release from active duty.

Mr. James E. Schaffner

Your last question deals with the constitutionality of Section 302.307. In the absence of obvious constitutional infirmities, the question of the constitutionality of a statute cannot be answered in the negative by this office. An act of the legislature carries a presumption of constitutionality. *Borden Company v. Thomason*, 353 S.W.2d 735, 743 (Mo. banc 1962).

Yours very truly,

JOHN C. DANFORTH
Attorney General