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January 26, 1968

DEPARTMENT OF LAW LETTER OPINION NO. 68-2-L (R-23)

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REQUESTED BY: David H. Campbell, Superintendent  
Motor Vehicle Division, ARIZONA  
HIGHWAY DEPARTMENT

QUESTION: May the Driver Licensing & Improvement Branch of the Motor Vehicle Division, as an alternative to suspending the operator's license of a person receiving 8 points for moving violation convictions, require such person to attend classes at a certified Driver's School, at a \$10.00 cost to the licensee?

ANSWER: No.

It is our understanding the Certified Driving School concept would consist of the following:

1. Under the administrative rulemaking powers delegated to the Highway Commission, that a rule be enacted that persons who have accumulated 8 points for convictions on moving vehicle violations be required to attend a Driver's School.
2. The Driver's Schools which errant drivers would be required to attend would be either privately owned or operated privately by non-profit corporations.
3. Such schools would agree to charge each student a tuition fee of \$10.00 to defray the expenses of teachers' salaries, rent for classrooms and teaching aids and materials.

The Constitution of the State of Arizona, Article 2, §4, states that "no person shall be deprived of life, liberty or property with-

out due process of law." In Schechter v. Killingsworth, 93 Ariz. 273, 380 P.2d 136 (1963), the Arizona Supreme Court stated;

" . . . this court recognizes that the use of the public highways is a right which all qualified citizens possess, subject, of course, to reasonable regulation under the police power of the sovereign." (Emphasis Supplied.)

To deprive a citizen of the right to use the public highways of this state without sufficient legislative authorization would contravene the "due process" clause of the state constitution.

In interpreting a statute concerning "due process of law", and the delegation of authority to administrative state agencies, the courts have uniformly held that, as a general proposition, justice demands that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained. American Federation of Labor v. American Sash & Door Company, 67 Ariz. 20, 189 P.2d 912 (1948); affirmed 69 S.Ct. 258, 335 U.S. 538, 93 L.Ed. 222; 6 A.L.R.2d 481.

Applying the foregoing principle to a citizen's constitutional right to the use of the public highways, the highway department must first determine that public safety would be enhanced by removing such operator from the highways of this state pursuant to a valid statute delegating such authority. This determination is a civil matter and has for its declared purpose the safety of the traveling public. Our Supreme Court has recognized this purpose as being a valid exercise of the police power and describes it as a "compelling public interest." State v. Birmingham, 95 Ariz. 310, 390 P.2d 103 (1964), rehearing 96 Ariz. 109, 392 P.2d 775.

The "point system" administered by the Motor Vehicle Division of the Arizona Highway Department was established generally pursuant to the authority vested by the Legislature in the Arizona State Highway Commission under A.R.S. §§ 18-106, 28-202 and 28-446.

Among the powers and duties delegated to the Highway Commission by A.R.S. §18-106 is:

"Exercise complete and exclusive control in jurisdiction of the state highways, and prescribe such rules and regulations to govern the use of state highways as it deems necessary for public safety and convenience, and to prevent the abuse and unauthorized use of the highways." (Emphasis Supplied.)

As discussed in the Birmingham case, supra, whereby the point system was held constitutional, the Highway Commission, through its administrative rule-making powers established an administrative formula for the guidance of its field personnel in the suspension of operator's licenses.

By specific reference to the delegating language of A.R.S. §28-446, the court's reasoning in the Birmingham case, supra, is clear. Persons who are convicted with frequency for violations of the traffic laws are to have their right to operate motor vehicles upon the public highways suspended. A.R.S. §28-446 states:

"A. The department is authorized to suspend the license of an operator or chauffeur without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

\* \* \*

3. Has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways."  
(Emphasis Supplied.)

In upholding the constitutionality of the "point system" as adminis-

tered by the Highway Department, the court in the Birmingham case, supra, stated as follows:

" . . . the Motor Vehicle Division of the State Highway Department has prescribed certain rules to aid in carrying out the legislative directive contained in subsection A, par. 3 (A.R.S. §28-446) known as the 'point system'.

\* \* \*

The point system is not the criteria or standard established by the legislature. It neither enlarges nor restricts the application of the statute. It is simply a declaration of administrative policy as to the significance to be given to the legislative language. Sturgill v. Beard, Ky., 303 S.W.2d 908. It is a 'rule of thumb' adopted for the convenience of the administrators of the statute in order to bring before the department for hearing those who may justifiably have their licenses suspended, serving as a prima facie guide when the discretion of the administering officials would be invoked. As such, it provides a workable method for effectuating legislative purposes." (Emphasis Supplied.)

The basis upon which the court sustained the constitutionality of the point system was the expression by the legislature that frequent traffic violators should be suspended. There is no expression by the legislature in any of the applicable statutes which could be construed as granting authority to the Highway Department to require anything of persons holding operator's licenses except to surrender them to the appropriate official when it has been found that causes for suspension of such licenses exist. Nowhere in the Uniform Motor Vehicle Operators' and Chauffeurs' License Act, A.R.S. §28-401 et. seq., is there an express provision which authorizes the Department to require a licensee to attend a Driver's School

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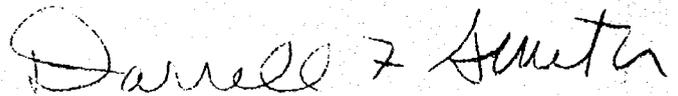
for which he must pay a fee.

While it is the opinion of the Attorney General's office that the existing legislative authorization is not sufficient to allow the Highway Department to require motor vehicle operators to attend schools, a solution is suggested by the language of the Arizona Supreme Court in Duncan v. A.R. Crull, 57 Ariz. 472, 114 P.2d 888 (1941).

"So long as a policy is laid down and a standard is established by statute, no unconstitutional delegation of legislative power is involved in leading to selected instrumentalities or for making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply." (Emphasis Supplied.)

Legislation could constitutionally be passed which would authorize the Highway Department to require chronic traffic violators to attend traffic schools as a condition of permitting them to continue driving. As indicated in the Duncan case, supra, such legislation should: (1) lay down the legislative policy [e.g. that the completion of a prescribed course at traffic schools will contribute to highway safety] and (2) prescribe a standard [e.g. where a traffic violator " has been convicted with such frequency of serious offenses" etc. (as used in A.R.S. §28-446) may be required by the Highway Department to attend such schools.]

Respectfully submitted,



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The Attorney General

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