

February
March 9, 1954
Opinion No. 54-42

TO: Glenn E. King
Acting Secretary
Arizona Highway Commission

RE: Section 66-281, A.C.A. 1939,
as amended.

QUESTION: Under the above section may
the department suspend an
operator's license belonging
to a person once convicted
of driving while under the
influence of intoxicating
liquor.

Section 66-281, supra, reads as follows:

"66-281. Authority of Department to suspend or revoke license. (a) The department is hereby 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:

1. Has committed an offense for which mandatory revocation of license is required upon conviction;
2. Has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage;
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;
4. Is an habitually reckless or negligent driver of a motor vehicle;
5. Is incompetent to drive a motor vehicle;

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6. Has permitted an unlawful or fraudulent use of such license;

7. Has committed an offense in another state which if committed in this state would be grounds for suspension or revocation.

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(b) Upon suspending the license of any person as hereinbefore in this section authorized, the department shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing as early as practical within not to exceed twenty (20) days after receipt of such request in the county wherein the licensee resides unless the department and the licensee agree that such hearing may be held in some other county. Upon such hearing the commission or their duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the department shall either rescind its order of suspension or, good cause appearing therefor, may extend the suspension of such license or revoke such license."

The Legislature by the above section has given the department the authority to suspend the license of an operator or chauffeur which authority is discretionary and has set forth the circumstances under which the department will exercise such discretion. The department cannot suspend an operator's license for one conviction of drunk driving under the first of the circumstances set forth in Section 66-281, supra, inasmuch as such offense does not call for the mandatory revocation of the operator's license under the provisions of Section 66-280, A.C.A. 1939, as amended. Numbers 2, 3 and 4 of Section 66-281 are applicable only in the event that the convicted drunk driver has been involved in an accident resulting in death or personal injury of another or serious property damage; or that he has frequently or habitually violated the laws of this state pertaining to the use of motor vehicles upon the highway. It is quite obvious that Numbers 6 and 7 of Section 66-281, supra, are not authority for the suspension of an operator's license where the person is guilty only of the act of driving a motor vehicle while under the influence of intoxicating liquor. Thus, there remains only Number 5 which provides that if a person is incompetent to drive a motor vehicle his license may be suspended.

It has been held that a person who has a general reputation of being an habitual drunkard is an "incompetent driver". *SLAUGHTER vs HOLSONBACK*, 147 So. 318. Furthermore, it was held by the Court in the case of *CROWELL vs DUNCAN*, 134 SE 576, that

"* * * It is commonly known that one who is most competent and careful as an operator of an automobile when perfectly sober, becomes incompetent and reckless after indulgence in one or two drinks. So unfailingly is this true, that one who is given to drinking intoxicating liquor must be regarded as an unsafe and a potentially incompetent and dangerous driver, and the owner of an automobile who knows of such habits and entrusts it to such a driver may be liable for injuries to third persons which follow."

However, it is to be noted that the ruling quoted above was rendered in an action involving the question of liability of the owner of a motor vehicle who had permitted another, known to indulge frequently in heavy drinking, to operate his automobile. Therefore, such ruling has little weight in determining what the Legislature meant by the words "is incompetent to drive a motor vehicle." An extensive search has failed to reveal a case in which the Court construed the words "is incompetent to drive a motor vehicle" as those words are used in the Uniform Motor Vehicle Operators and Chauffeurs License Act, regardless of the fact that said Act has been adopted by numerous states throughout the country.

In arriving at the intent of the Legislature with regard to first conviction of drunk driving, it is well to note that prior to 1951 the law provided, under Section 66-248, A.C.A. 1939, for the revocation of an operator's or chauffeur's license when said operator or chauffeur was convicted of driving a motor vehicle while under the influence of intoxicating liquor. Section 66-248, supra, was repealed by the laws of 1951, Chapter 122, Section 36. The present law, Section 66-156, A.C.A. 1939, as amended, provides for the revocation of the license to drive a motor vehicle when a person has been convicted a second time in any twelve-month period of driving a motor vehicle while under the influence of intoxicating liquor. It therefore appears that the Legislature intentionally withdrew the authority which had previously authorized the department to revoke upon one conviction of drunk driving.

It is the opinion of this office that the department does not have the authority to suspend the operator's or chauffeur's license of a person once convicted of driving a motor vehicle while under

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the influence of intoxicating liquor by virtue of Section 66-281,
supra, where the suspension would be based solely upon said con-
viction.

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