

GARY K. NELSON, THE ATTORNEY GENERAL
STATE CAPITOL
PHOENIX, ARIZONA

August 22, 1969

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DEPARTMENT OF LAW OPINION NO. 69-22 (R-77)

REQUESTED BY: DAVID H. CAMPBELL
Superintendent
Motor Vehicle Division

QUESTIONS: 1. Is it necessary that the applicant's consent be required on an application for an operator or driver license to comply with the provisions of Senate Bill 28, the "Implied Consent" law?

2. Would reference to the "Implied Consent" law be required to be shown on the license when issued?

ANSWERS: 1. No.

2. No.

A.R.S. § 28-691, as enacted by the Legislature does not contemplate a driver actually consenting on an application for a driver's license. The statute reads in part:

"A. Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent. . . ."

It, therefore, applies to persons licensed in other states, and is not confined to resident drivers. As has been stated in Hess v. Pawloski, 274 U.S. 352, 47 S.Ct. 632, _____ L.Ed. _____ (1927), at page 633:

". . . In the public interest the state may make and enforce regulations reasonably calculated to promote care on the part of all, residents and

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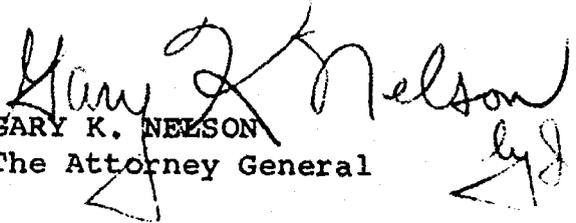
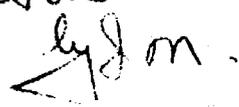
August 22, 1969

Page Two

nonresidents alike, who use its highways. . . .
The state's power to regulate the use of its highways extends to their use by nonresidents as well as by residents."

The Court went on to say that the use of the highway by the nonresident was implied consent as to the appointment by such nonresidents of the designated age upon whom process may be served. It follows then that, in the interest of safety, a nonresident's use of our highways would be an implied consent to allow the administration of tests to determine alcohol content. Finally, the statute contemplates the arresting officer asking the driver at the time of the arrest whether or not he consents to the test and the consequences for refusing.

Respectfully submitted,


GARY K. NELSON
The Attorney General 

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