May 15, 1941

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Mr. B. H. McAhren, Superintendent
Motor Vehicle Division
Arizona Highway Department
Phoenix, Arizona

Att: H. J. Travis, Supervisor
Dept. of Drivers' Licenses

Gentlemen:

We have your letter of May 7 relative to the powers of your decision to suspend or revoke drivers' or chauffeurs' licenses. We think the main confusion arises out of the inexact use of the terms "suspend" and "revoke" in our statutes.

When a license is suspended it is not destroyed and it still exists but the licensee is not permitted to use it for a set period of time, and any use of it during that time is punishable as a crime. On the other hand when a license is revoked it is terminated and is no longer a license for any purpose.

We do not read Sec. 1667 to mean that the division may revoke a license except where directly authorized by law. It may suspend a license for any period of time not to exceed one year and at the end of that time the license is returned and in the case of chauffeurs the chauffeurs' badge and license - which is supposed to have been turned in to the division - is likewise returned. The use of the words "or revoking any license" merely relates to the provision that the license be surrendered to the division.

Also Sec. 1669, where it says that a person whose license is revoked shall not receive a new license until one year from the date of revocation, does not mean that the old license may be revived at the end of the year and go into effect again. It merely means that the person whose license is revoked may, at the expiration of one year, come before the division and ask for a new license - not to have his old license back. Where the license is suspended he may receive his old license back without having to apply for a new license.

The provisions of Sec. 1668 that any person who has been denied a license or whose license has been revoked, except where the revocation is mandatory, under the law may file a petition for a hearing in the matter in the Superior Court, and the Court determines the matter. In other words, this section merely gives one who is denied a license, or his license has been revoked, a right to appeal to the Superior Court, whose decision settles the matter.

In other words it grants an appeal from the refusal of a license or from the revocation of a license except where the revocation is mandatory. In other words the revocation, in case an appeal is taken, does not become final until the Court has settled the question.

We will take up your two specific questions: First, under what condition may you revoke a license where the revocation is not mandatory? We have not been able to find any specific provision in the statute giving you the right to revoke a license unless the law makes it mandatory upon you to do so. In Sec. 1664 you are commanded to forthwith revoke a license upon receiving a record of his conviction for certain specific offenses. We would say then that logically these are the only offenses for which you may revoke the license of an operator. All other offenses not being mentioned in the section would appear to be excluded from its operation. There is, in Sec. 1664, a provision that the division, upon receiving the record of a conviction of a person operating a motor vehicle while the license of such person is suspended or revoked, shall immediately extend the period of such first suspension or revocation for an additional like period. This provision is clearly a misunderstanding of the word "revocation." When the license is revoked there is nothing to extend. The rule is correct as to suspension but not as to revocation. If the one whose license has been revoked operates the vehicle nevertheless he is subject to prosecution and the penalties provided for his offense.

We also have Sec. 1665 providing for optional suspension. This section merely means that the division may immediately suspend the license of a person without hearing and without record of conviction whenever the division believes such person has committed certain types of offenses or has operated the vehicle in such manner as to contribute to or cause an accident resulting in the death or injury of any person, or serious property damage; or that such person is incompetent to drive a motor vehicle, or is afflicted with mental or physical infirmities or disabilities rendering it unsafe for him to drive a motor vehicle; or that such person is a habitual reckless or negligent driver or has committed a serious violation of the motor vehicle laws. When this optional suspension is revoked by the division it immediately notifies the licensee of a hearing before the division and upon such hearing it may either vacate its order of suspension (which leaves the matter the same as if no action had ever been taken by the division) or as it appears from the evidence it may suspend the license of a person for a further period (beyond optional suspension) or may revoke said license.

In revoking said license it is clearly governed by the provisions of Sec. 1664 as to what offense makes it mandatory upon the division to revoke the license.

We summarize this letter in a specific reply to your two questions: First, the division may not revoke a license unless the revocation is made mandatory by some provision of the law. Second, the revocation of the license does not

contemplate revocation for any set time for the reason that the revocation of the license kills it instanter, subject to appeal to the Superior Court, which cannot be revived, and the licensee's only remedy is to make application for a new license. However, a new license cannot be granted under Sec. 1669 until the expiration of one year from the date of such revocation. If the Court overrules the order of the division in granting the revocation, the order is new and the license continues in effect the same as if it had never been issued.

Very truly yours,

JOE CONWAY
Attorney General

A. R. Lynch

A. R. LYNCH
Assistant Attorney General

ARL.cer