

MAINE STATE LEGISLATURE

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Maine Judicial Council

Report of Committee appointed April 6, 1956,
to study Pardon Procedure in Maine

The Judicial Council was called in to Augusta by Governor Muskie on April 6, 1956.

Among other subjects he desired the Council to study was that of pardons, particularly the flood of pardon petitions of convicted drunken drivers. It appeared that during Governor Payne's two terms, 1948-1952, there were 176 such petitions; during Governor Cross's term, 1952-1954, there were 40; and during Governor Muskie's term, 1954 to July 12, 1956, there were 47 such petitions.

Governor Muskie pointed out to this Council, as had Governor Cross before him, that hearings on these petitions consumed a great deal of time before Governor and Council. He realized that the impelling motive behind such petitions was an attempt to secure operator's license, lost on conviction. In most cases it was represented that possession of such license was necessary to the petitioner's livelihood.

The Governor wondered, just as his predecessor had, whether it would not be possible and advisable to create a pardon's board to screen these petitions and lighten the hearing load for the Governor and Council.

It is the opinion of this committee that it would be possible to create such a board. It could conduct pardon hearings. It could not grant pardons, however.

"A pardon is a declaration, on record, by the Chief Magistrate of a state or country that a person is relieved from the legal consequences of a specific crime."

30 Am Jur, 523

In this state the power to grant pardons is vested in the Governor and Council.

Constitution of Maine, Article V, Part First, Section 11

The power to pardon cannot be delegated.

In re McKinney, 3 W. W. Marr. (Del.) 434
138 Atl. 649

A pardons board could, therefore, advise only.

Ex parte Costello, 22 Wash. 2d, 697
157 Pac. 713
Licavoli v. State, (Ohio App)
34 N. E. 2d 450

In June of 1955 a committee of this Council recommended the creation of a Pardon Hearing Board.

This committee does not recommend such a board.

While it must be taken as true that pardon petitions by those convicted of drunken driving clutter the docket of the Governor and Council, yet the creation of a pardons board is not the answer to the problem.

The legislature has said that one convicted of drunken driving must lose his license to operate motor vehicles.

"A pardon, when granted, is the determination by the ultimate authority that the public welfare will be better served by inflicting less punishment than the judgment fixed."

Biddle v. Perovich, 274 U. S. 480

Loss of license was, in the first instance, probably not deemed punishment. It was probably a safety measure for the general public. If this be so, then the Chief Executive should not grant pardons simply so that convicted drunken drivers could regain their operators' licenses. Such would be thwarting the purpose of the legislature and that, certainly, is not the Chief Executive's province.

Perhaps a study of the development of the drunken driving laws and its effect on operators' licenses would clarify the problem.

In 1911 the legislature defined the crime, namely: "Any person operating a motor vehicle upon any way recklessly or while under the influence of intoxicating liquor so that the lives or safety of the public are in danger shall be punished . . ."

"On conviction of violation . . . the license of the person to operate . . . shall be revoked immediately."

P. L. 1911, Chapt. 162, Sec. 20

In 1915 the legislature added a section making it the duty of "every officer and citizen" to report to the Secretary of State any person driving under the influence (regardless of conviction) and made it his duty to investigate and gave him authority to suspend the operator's license.

Such was the law at the time of the 1916 revision.

Revised Statutes (1916) Chapt. 26, Sec. 38 & 39

In 1919 the legislature tightened up the law, making it a crime to "attempt to operate" and adding the words "at all" so that the statute read "while at all under the influence" etc.

This also provided for suspension of operator's license pending appeal from conviction in lower court.

P. L. 1919 Chapt. 211, Sec. 38

In 1921 the legislature shifted the authority to suspend licenses from the Secretary of State to the State Highway Commission

It also stated that revocation of license, on conviction, should be for three years with right to petition for reissuance after one year.

It also increased fine on first conviction from \$50 to \$100-\$1,000 or 30 days to 1 year imprisonment or both. For subsequent offenses it made imprisonment mandatory, 30 days to 1 year.

P. L. 1921, Chapt. 211, Sections 73 & 74

In 1924 the statute was challenged because it provided for maximum imprisonment of 1 year. The law court held this, indeed, made it a felony and defendants could be held for trial only on presentment by a grand jury.

State v. Vashon, 123 Me. 412

In 1925 the legislature remedied this situation by reducing the imprisonment maximum to eleven months. At the same time the legislature made the crime a felony when "of a high and aggravated nature" and provided a maximum of two years imprisonment.

In 1925 the legislature shifted enforcement of license regulations back from the Highway Commission to the Secretary of State.

P. L. 1925, Chapt. 144, Sec. 6

The statute was again challenged on a warrant which failed to allege that the crime took place "upon a way or bridge, including public parks and parkways." The court held these allegations were necessary because otherwise a man could be held if he operated while at all under the influence, in his own door yard or private driveway.

State v. Connant, 124 Me. 298

The legislature plugged this loophole by changing the description of the locus to "upon any way or in any other place."

P.L. 1929, Chapt. 327, Sec. 17

At the same time, the legislature clarified the provisions relative to revocation. On first conviction license was revoked for 3 years with right to petition after 1 year. On second conviction license was revoked for 5 years with right to petition after 2 years. On subsequent convictions license was revoked for life.

This was the law in the 1930 revision.

R. S. 1930, Chapt. 29, Sec. 88

In 1935 the legislature doubled the time, in each category, petitioners had to wait, after conviction, before they could petition for reissuance. This was the furthest the legislature went in tightening up regulations relative to operators' licenses.

P. L. 1935, Chapt. 89

In 1939 the legislature included the words "right to operate" in its revocation procedures. It also struck out the word "conviction" and substituted "revocation."

P. L. 1939, Chapt. 17

The same legislature inserted the blood test into the statute.

P. L. 1939, Chapt. 273

So the law stood in the 1944 revision.

R. S. (1944) Chapt. 19, Sec. 121

In 1947 the legislature started liberalizing its revocation procedures. Prior to that, if a person had three or more convictions under this statute his operator's license was revoked for life.

This law permitted the Secretary of State to issue a conditional operator's license to such person if it appeared beyond a reasonable doubt that he had "refrained from all use of intoxicating liquor for a period of 6 years" conditioned upon continued non-use of liquors.

P. L. 1947, Chapt. 232

Again, in 1951, the legislature liberalized the statute. It cut down the period of revocation of license on first offense from 3 to 2 years and permitted petitions for restoration after 1 instead of 2 years.

P. L. 1951, Chapt. 93

No other changes pertinent to this discussion have been made, and the law thus appears in the 1954 revision.

R. S. (1954) Chapt. 22, Sec. 150

It may be seen from the foregoing that the drunken driving statute first enacted in 1911, over those years when the use of the automobile increased tremendously and the machine itself improved in weight, speed, and driving ease, was, in like degree, made more severe in punishment provided, in plugging loopholes, and in provisions relative to suspension and revocation of licenses.

This trend continued until after prohibition was abolished in the State. Since that time the practice of drinking intoxicating liquors has increased tremendously. It has become accepted socially. The State has gone into the business of selling intoxicating liquors. The State licenses beer parlors, taverns, and cocktail lounges in locations miles out in the country where it is obvious that automobiles must be used for the public to reach them and return home.

Perhaps as a result of all of this the attitude of the legislature on the revocation of licenses started, after 1947, to become liberalized. In 1951 it cut in two the waiting time between revocation and petition for reissuance of operators' licenses. It can, if it wills, further reduce this waiting period.

In any event, it is the province of the legislature, not the Governor and Council, to provide relief for those who may lose their licenses on conviction for drunken driving.

Your committee therefore concludes that the way should not be made easier for those who seek to regain their operators' licenses by the executive. Certainly not by the creation of a pardons board.

It is respectfully suggested that the Governor and Council hold firm in upholding legislative intent by rejecting all petitions for pardon by those convicted of drunken driving.

If the present regulations are too harsh, the pressure will build up to the point where the legislature will ameliorate them, and that, in the final analysis, is the only proper way to relieve the harshness of revocation provisions governing operators' licenses of those convicted of drunken driving.

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