

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA

April 15, 1936

Honorable Lewis O. Barrows  
Secretary of State  
Augusta, Maine

Dear Sir:

Under date of April 15, you ask my opinion concerning the meaning of the word "conviction" as used in Section 88 of Chapter 29 of the Revised Statutes, as amended; and you are interested to know whether being "adjudged guilty" in the municipal court constitutes a "conviction" where an appeal is taken to a higher court.

In answer to your question, it is a well established principle of law that an appeal from the judgment of a lower court vacates the judgment, and the respondent enters the higher court with the same presumption of innocence and on the same footing as he entered the lower court. Accordingly, the word "conviction", as used in Section 88, means final conviction. This interpretation finds full support in the case of Donnell, Petitioner, vs. The Board of Registration of Medicine, reported in 128 Me., p. 525. The interpretation also finds full justification in Section 88, for were we to interpret the word "conviction" as meaning the judgment of the lower court in spite of an appeal, it would mean that the license of an operator of a motor vehicle adjudged guilty of violating the provisions of Section 88, in the lower court, would forfeit his right to operate a motor vehicle for three years, although in the higher court the respondent might be found not guilty of the offense charged. Obviously, the legislature intended no such a situation.

In view of the well established rule of law that an appeal vacates the prior proceedings, and in view of the principle laid down in Donnell vs. The Board of Registration of Medicine, I am of the opinion that the word "conviction", as used in Section 88, means the adjudication of guilt in the lower court when no appeal is taken to a higher court; or the adjudication of guilt in the higher court where an appeal is taken to the higher court from such lower court.

Very respectfully yours,

Attorney General

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