

MAINE STATE LEGISLATURE

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December 29, 1937

Hon. Frederick Robie
Secretary of State
Augusta, Maine

Dear Sir:

In your letter to me under date of December 21, 1937, you asked for a written opinion on the following question:

Is it mandatory that the Secretary of State revoke the license to operate a motor vehicle issued by this state to a person who is afterwards convicted in another state of operating a motor vehicle while under the influence of intoxicating liquor upon receipt of an official notice of the conviction for the offense in such other state or of an abstract of the Court records in such other state?

Under the provisions of the Revised Statutes, Chapter 29, as amended, there are many penalties provided for violations of the motor vehicle laws, but the only section which provides for a mandatory revocation of an operator's license is section 88 of Chapter 29 as amended by Chapter 89 of the Public Laws of 1935, and in this section, no discretion is given to the Secretary of State and he must immediately revoke the operator's license of any person who is "convicted of violating the provisions of this section".

This section (section 88) provides that "Whoever shall operate or attempt to operate a motor vehicle upon any way or in any other place when intoxicated or at all under the influence of intoxicating liquors, or drugs, upon conviction, shall be punished", and then penalties are provided for first and subsequent convictions, and in the second paragraph of said section punishments are provided when "such offense is of a high and aggravated nature".

The courts of this state, of course, have no jurisdiction to punish criminally for any offense committed outside

of the jurisdictional limits of the state, and as the provision for mandatory revocation contained in the last sentence of paragraph 2 of section 88 applies only to "any person convicted of violating the provisions of this section", it is my opinion that the revocation of an operator's license by the Secretary of State is mandatory only in cases where the operator was convicted by the courts of this state of driving while under the influence of intoxicating liquor.

You will note that the last paragraph of section 45 of Chapter 29 provides that the Secretary of State may forthwith suspend, revoke, or terminate any right, license, or registration granted in this state to a person resident in another state whose license or registration has been suspended, revoked, or annulled by the state of his residence.

Under this provision if a person had secured license or registration in this state while a resident thereof, and then moved to another state or country and was convicted in such other state or country, the Secretary of State may forthwith suspend, revoke or terminate any right, license or registration granted in this state, but his duties under this section are not mandatory.

You will of course have in mind that under the provisions of R. S. Chapter 29, section 42, you may suspend or revoke any certificate of registration or any license issued to any person to operate a motor vehicle after hearing for any cause which you may deem sufficient, and if you believe that the holder of any license or registration is an improper person or incompetent to operate a motor vehicle or is operating so as to endanger the public, you can summarily suspend such registration or license pending hearing, and under the provisions of this section, after hearing, you could find that conviction in another state of the holder of a Maine registration of the crime of operating under the influence of liquor is sufficient cause for revocation or suspension of such registration or license.

This section does not provide for how long a time you may so revoke or suspend, and in my opinion, the only limits on the length of time for which you may so revoke or suspend are such time as may be fixed by the exercise of reasonable discretion. If you act unreasonably in revoking or suspending, or in fixing the time limits for such revocation or suspension, the aggrieved person may appeal to any Justice of the Superior Court as provided in R. S. Chapter 29, section 46.

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In my opinion, also, if you think that it should be mandatory upon the Secretary of State to suspend or revoke the license or registration issued by this state upon proof of conviction of driving while intoxicated in another state or country, the statute should be amended so as definitely to confer this obligation upon your office.

The wisdom of such statute in view of the difference in statutes and procedure in other states and countries is debatable, and I should be very glad to discuss this with you if you are interested in the subject.

Very truly yours,

Franz U. Burkett
Attorney General

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