STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1951 - 1954

December 14, 1951

To Honorable Harold I. Goss, Secretary of State

Re: Burden of proof or proceeding with proof on hearing *re* revocation of operator's license.

Reference: Memo of Paul MacDonald, Deputy Secretary of State, dated November 29, 1951.

Mr. MacDonald's memorandum of November 29, 1951, sets forth at length the procedure which is followed by the office of the Secretary of State when that office is confronted with determining the eligibility of a licensee to retain his operator's license under circumstances within the sound discretion of the Secretary or his Deputy.

The question in answer to which an opinion is sought does not involve any of the circumstances under which a revocation of an operator's license is mandatory. As we understand the problem, it involves circumstances warranting suspension or revocation "for any cause which" the Secretary of State "deems sufficient," which for all practical purposes means, "whenever he has reason to believe that the holder thereof (of an operator's license) is an improper person or incompetent to operate a motor vehicle, or is operating so as to endanger the public." (Quotations are parts of section 6 of Chapter 19, R. S. 1944, as amended through 1951).

The specific question is: When the Secretary has information tending to show that an operator's license should be suspended or revoked for cause within the Secretary's authority, must the Secretary proceed to present information of evidentiary character against the licensee and the licensee then be afforded an opportunity to defend or justify himself, so to speak, or may the Secretary inform the licensee as to the matters indicating cause for suspension or revocation and require the licensee to first present information of evidentiary character showing cause why his license should not be suspended or revoked.

The usual judicial procedure requires one who makes a charge to sustain it by the burden of proof. That such should be the case here is suggested by the fact that the legislature has prescribed in section 6 for hearing before final suspension or revocation for cause. A hearing is of course judicial in nature and contemplates opportunity for confrontation and cross examination of witnesses.

But beside providing for a hearing, the legislature has enacted many more provisions of law relative to operators' licenses. The statutes provide for qualifications before an operator's license may be issued in the first instance. These conditions of eligibility, among others, contemplate physical qualifications as well as demonstrated ability to operate a motor vehicle.

Recognizing the administrative complexities involved in licensing approximately one-third of the population to operate motor vehicles, the legislature has delegated broad powers to the Secretary in an attempt to control the operation of motor vehicles upon the ways of the State by persons qualified to operate the same.

When one seeks an operator's license in the first instance he has the burden of showing affirmatively his qualifications entitling him to be licensed. There would appear to be nothing unreasonable in requiring a licensee at some later

date to again show affirmatively his qualifications to remain a licensee. If such requirements are in any respect unreasonable or burdensome to the people for whose welfare motor vehicle regulatory laws are enacted by the legislature under the police power, the remedy would clearly be through amendatory legislation.

Section 5 of the motor vehicle laws pertains to the public nature of the records of the Secretary and refers specifically to operators' licenses. The last sentence of the section reads;

"Complaints in writing may be regarded as confidential."

Following section 6 authorizing the Secretary after hearing to suspend or revoke an operator's license for any cause deemed sufficient by the Secretary, the legislature has prescribed in section 9 for notice of the hearing, for service of notice, and has stated that the licensee shall be warned "that he may then and there appear, in person or through counsel, *to show cause why his license should not be suspended or revoked* . . . " Assuming a proper notice in which the licensee receives adequate warning as to the respects in which his qualifications to retain an operator's license are challenged, there would appear to be no undue burden upon him to appear and establish affirmatively in order to retain his license no more than he may be required to do when applying for his license in the first instance.

It is significant that the law does not place upon the Secretary the burden of showing why the license should be revoked. Quite the contrary, the burden is placed upon the licensee to show cause why it should not be revoked.

While the widespread and nearly universal holding of operators' licenses and the ease with which the same are procured may tend to a popular belief that they have become a vested property or personal right in the legal sense, the fact remains that the right to an operator's license is still a privilege accorded under the police powers.

Although to one who has held an operator's license for many years it may seem highly arbitrary that he suddenly be called upon to justify his right to retain his license, there are a number of reasons in justification of the legislature's providing for such procedure.

As stated above, the fact that the right to operate a motor vehicle is a privilege is legalistically a sufficient reason. Of more practical consideration it should be recognized that any Secretary who arbitrarily ordered large numbers of citizens willynilly to come in and show cause would not long survive in office; and it should be remembered that in each case each aggrieved person has the right of appeal to the Superior Court. Again, with the large number of operators' licenses outstanding, with limited appropriations and with limited personnel, widespread hearings to show cause become practically an administrative impossibility.

It is believed that the foregoing advisory opinion sufficiently sets forth the views of this office with respect to the principal question propounded. In considering the matter, we carefully studied a copy of the order of notice used in the case giving rise to the question and we also considered a brief submitted by counsel for a licensee summoned to show cause under the provisions of section 9 of the motor vehicle laws.

We should like to add the following: In our opinion the copy of notice

supplied to us does not comply with the statute in that it warns the licensee of nothing except the time and place of hearing. We believe that in order to constitute an adequate warning within the meaning of the statute, the notice should set forth with sufficient particularity all that is necessary to apprise the licensee as to that which he must be prepared to establish in order to retain his license.

Also, while not strictly a matter of law, being more a matter of administration, we would seriously recommend that in all cases where the statutory procedure is predicated upon a confidential complaint, it would be well to make independent inquiry as to the sincerity of the complaint and in so far as administratively possible to secure information not of a confidential nature.

JOHN S. S. FESSENDEN
Deputy Attorney General

December 18, 1951

To Honorable Frederick G. Payne, Governor of Maine
Re: Licensing of State Agencies under Milk Control Law

Reference: Milk Commission memo to you, dated October 19, 1951. .

The Commission's memo of October 19, 1951, refers to a memo which you presumably addressed to the Commission, inquiring as to the possibility of licensing the Department of Institutional Service as a "Dealer" under the provisions of the Maine Milk Commission Law.

We assume that your memo was prompted by the fact that the Commission has licensed the University of Maine as a dealer. That institution having been licensed, it is reasonable to inquire as to the status of institutions within the jurisdiction of the Department of Institutional Service.

So far as the Attorney General's office is concerned, to my knowledge, there is nothing in writing as to the licensing of the University of Maine. We recall that in the spring of 1951 Mr. Fessenden, Deputy Attorney General, was asked by Mr. Chenevert as to whether the Commission could issue a dealer's license to the University. It was pointed out that the University produced milk in the agricultural department, but that the production was insufficient to meet demands. Therefore a considerable amount of milk had to be purchased for the cafeterias and the campus store. It was also pointed out that the milk used in the University outlets was on a sale basis in that the students bought their meals and bought at the campus store whatever they consumed.

As we remember it, it was stated to Mr. Chenevert that this office was not interested in the problem of licensing the University because as a pure proposition of law we had advised them in 1949 that the State itself, meaning the governmental instrumentalities thereof, were not subject to control under the terms of the Milk Commission Law. It is a fundamental principle of law that the State itself is not bound by regulatory legislation unless specifically included in the terms of the legislation.

The Milk Commission Law defines a dealer as a person. . . A person in the same law is defined: