

MAINE STATE LEGISLATURE

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Notes by Mr. Frost in necessity of hearing where license to drive is revoked or suspended.

See, Am. Jur. 593 & Suppl.; Ratcliff v. Lampton, 195 P 2d 792, 32 Cal. 2d 226 (In conviction, facts have already been determined in a criminal proceeding).

By the exercise of police power of the State, through legislative enactments, individuals may be subjected to restraints, and the enjoyment of personal and property rights may be limited, or even prevented, if manifestly necessary to develop the resources of the State, improve its industrial conditions, and secure and advance the safety, comfort and prosperity of its people.

In the exercise of that power the State may regulate the speed, and enact other reasonable rules and restrictions as to the use of automobiles upon the public streets. State v. Mayo, 106 Maine 62.

License is a privilege, or permission and in no sense a contract or property.

"The rights of a licensee can rise no higher than the terms of the statute or ordinance by which he becomes holder of the license.

235 Mass. 95, Burgess v. Brockton.

When required expressly or impliedly by statute or ordinance, notice and hearing are necessary prior to revocation, amendment, etc.; but, when not so required, notice and hearing are not necessary prior to revocation of a license.

If a motor vehicle operator is advised of a claimed violation of the motor vehicle regulations and knows that on conviction a suspension of his license is a legal possibility, it cannot be said that he had no opportunity to be heard in the matter of suspension of his license.

People v. Cohen, 217 N.Y.S. 726
10 ALR 2d, 833 anno.

Misdemeanor - car lacked "adequate brakes". Fined; license revoked.

Law: Some, mandatory revocation; other States, discretionary.

"Nor can it be said that the applicant had no opportunity to be heard in the matter of the suspension ultimately ordered by the recorder, for the former was advised of the claimed violation presented by the alleged lack of adequate brakes, and, as his knowledge of the law is presumed, he must have known that, upon conviction, the suspension of his license and certificate, in the discretion of the convicting magistrate, was among the legal possibilities confronting the applicant. Therefore he had an opportunity to be heard."

The necessity of notice and hearing before revocation or suspension

of a license to operate a motor vehicle depends upon statutory provisions and, consequently, the right of the driver to such notice and hearing in particular instances is determined primarily from the terms of the statute.

For this reason ALR 2d, Vol. 10, 834, states that no more specific rule can be made.

Generally, decisions holding that there must be hearing and notice are in instances where the revocation or suspension is not based upon a conviction.

Sands v. Fletcher (1945), 54 N.Y. S. 2d 449: Where the revocation of a driver's license to operate a motor vehicle is not based upon a conviction, it can be revoked only after a hearing. This case also states that a license is a vested right.

Application of Kafka decision (1947), 71 N.Y.S. 2d 179. In a proceeding for revocation or suspension of a license for reckless driving, the court said:

"We also desire to call attention to the fact that in a proceeding such as this where revocation or suspension of a license is permissive, the statute requires that the holder of the license 'shall have an opportunity to be heard except where such revocation or suspension is based solely on a court conviction'."

And so, where Judges do the revoking, it then is a judicial act and is not done in an administrative capacity. St. Louis v. Mosier (1949), 223 SW 2d 117.

Discretionary. Under a statute which provided that the commissioner of motor vehicles may hold a hearing looking toward a revocation of a license it was held that the commissioner was granted "discretionary authority as to whether he will conduct such a hearing."

It is to be noted that the court further held that a revocation or suspension of a license would not be set aside on the ground that the commissioner did not grant a hearing, unless it appeared that the commissioner abused his discretion.

Noted in 1954 by
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