

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

September 5, 1968

Joseph T. Edgar, Secretary of State

Secretary of State

John N. Kelly, Assistant

Attorney General

Penalties Provided for Driving While Impaired

SYLLABUS:

The license suspension provisions of 29 M.R.S.A. §1312-A which became effective on April 26, 1968, are operative only upon described offenses which occurred after the reference date; and do not reduce the period of license suspension specified and imposed under 29 M.R.S.A. §1312 for offenses occurring prior to the reference date although conviction may be subsequent thereto.

FACTS:

The Secretary of State in his capacity as administrator of the law relating to driver licenses in a memorandum to the office of Attorney General requested a legal opinion regarding the function of the Motor Vehicle Division in light of the change of the law brought about by 29 M.R.S.A. §1312-A and the interpretation thereof by our Supreme Judicial Court in the decision of June 26, 1968, in the case of State of Maine v. Arthur J. Bryce, Sr. After oral discussion with the Secretary of State the specific questions raised were framed as they appear below.

QUESTIONS:

(1) Whether the Secretary of State should reduce the length of suspension of licenses of persons convicted of violation of

September 5, 1968

29 M.R.S.A. §1312 (operating under the influence of drugs or liquor) in light of 29 M.R.S.A. §1312-A, when the offense was committed prior to the effective date of 29 M.R.S.A. §1312-A and a finding of guilty was made prior to the effective date of 29 M.R.S.A. §1312-A?

(2) Whether the Secretary of State should reduce the length of suspension of licenses of persons convicted of violation of 29 M.R.S.A. §1312 (operating under the influence of drugs or liquor) in light of 29 M.R.S.A. §1312-A, when the offense was committed prior to the effective date of 29 M.R.S.A. §1312-A and finding of guilty was made subsequent to the effective date of 29 M.R.S.A. §1312-A?

(3) Whether the Secretary of State should reduce the length of suspension of licenses of persons convicted of violation of 29 M.R.S.A. §1312 (operating under the influence of drugs or liquor) in light of 29 M.R.S.A. §1312-A, when an appeal was taken subsequent to the effective date of 29 M.R.S.A. §1312-A from a guilty finding of an offense committed prior to the effective date of 29 M.R.S.A. §1312-A?

ANSWERS:

(1) The Secretary of State should not reduce the length of suspension.

(2) The Secretary of State should not reduce the length of suspension.

(3) The Secretary of State should not reduce the length of suspension.

OPINION:

Pertinent sections of 29 M.R.S.A. §1312 read as follows:

"Whoever shall operate...a motor vehicle...when...at all under the influence of intoxicating liquor or drugs, upon conviction, shall be punished..."

"The license or right to operate motor vehicles of any person convicted of violating this section shall be revoked immediately by the Secretary of State upon receipt of an attested copy of the court records, without further hearing."

"No person whose license or right to operate a motor vehicle has been revoked upon conviction of violating this section shall be licensed again or permitted to operate a motor vehicle for 2 years..."

Pertinent sections of 29 M.R.S.A. §1312-A read as follows:

"It is unlawful for any person to drive any motor vehicle within this State while his mental or physical faculties are impaired, however slightly, by the use of intoxicating liquors or drugs..."

"The license or right to operate motor vehicles of any person convicted of violating this section shall be suspended for 3 months immediately by the Secretary of State upon receipt of an attested copy of the court records, without further hearing."

The Supreme Judicial Court of Maine determined in State of Maine v. Arthur J. Bryce, Sr., Docket No. 408, Law Docket No. 959, June 25, 1968, that that portion of 29 M.R.S.A. §1312 making it an offense to operate a motor vehicle while "at all under the

influence of intoxicating liquor or drugs" was repealed and replaced by 29 M.R.S.A. §1312-A (cited above). In effect, the Legislature, with enactment of 29 M.R.S.A. §1312-A reduced the administrative penalty for operating a motor vehicle under the influence from two years suspension of the driver's license to three months.

29 M.R.S.A. §1312-A became effective April 26, 1968. The question as to the disposition of pertinent cases pending on April 26, 1968, at various court levels is one of concern only to the judiciary.

The responsibility of the Secretary of State is clear. Under 29 M.R.S.A. §1312 the Secretary merely carries out a ministerial function pursuant to court decisions. Upon receipt of a court ruling finding a defendant guilty of violation of 29 M.R.S.A. §1312, the Secretary has no alternative but automatically suspend the defendant's license for two years.

JOHN N. KELLY
Assistant Attorney General