

MAINE STATE LEGISLATURE

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June 10, 1969

Joseph T. Edgar, Secretary of State

State

Leon V. Walker, Jr., Assistant

Attorney General

Is the Suspension Period for Convictions of Attempting to Operate a Motor Vehicle Under the Influence, Repealed by the Enactment of Section 1312-A, Title 29, M.R.S.A. ?

SYLLABUS:

It is the duty of the Secretary of State, under 29 M.R.S.A. § 1312, to revoke immediately a person's license to operate upon receipt of an attested copy of the court record of his conviction of an attempt to operate under the influence.

FACTS:

29 M.R.S.A. § 1312, provides in part:

"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 liquor . . . , upon conviction, shall be punished by" (Emphasis supplied)

and then provides for certain penalties and for suspension of operator's license.

29 M.R.S.A. § 1312-A, enacted in 1968, provides in part:

"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"

and then provides for lesser penalties and for a much shorter period of suspension of license.

In State v. Bryce, (Me.) 243 A. 2d 726, the court held that the offense of "operation when impaired" is indistinguishable from and synonymous with "operation while at all under the influence" as judicially defined, and that this provision of § 1312 must be deemed repealed by the provisions of § 1312-A, but that there still

remained unrepealed the offense of attempting to operate while "intoxicated" or "under the influence" for which the same penalty is prescribed as for the offense of operating "when intoxicated" or "under the influence."

QUESTION:

Shall the Secretary of State in revoking licenses in the case of convictions for attempting to operate while under the influence, use the period of revocation set forth in section 1312?

ANSWER:

Yes.

OPINION:

In Bryce, Justice Webber speaking for the Court states:

"One practical effect of the enactment of Sec. 1312-A is that a difference in the degree of impairment is related to a corresponding difference in potential penalty and severity of license sanctions. The offense of 'operation while impaired' (formerly 'operation while under the influence') becomes an offense of lesser degree than the offense of 'operation while intoxicated. . .'. Such a distinction accords with logic and reason and furnishes a rationale for legislative intent.

"On the other hand through what may have been legislative inadvertence, logical treatment is not afforded the offense of attempting to operate while impaired. On its face the statute now imposes a heavier penalty for the attempt than for the effective completion of the offense. For that reason we neither intimate nor suggest what our opinion might be with respect to an implied repeal of that portion of Sec. 1312 which in effect provides a penalty for attempting to operate while impaired."

Although the above-quoted language indicates that the Court, if presented squarely with the question whether § 1312-A impliedly repealed the "attempt" provisions of § 1312, might well hold that there was an implied repeal, the duty of the Secretary of State under § 1312 is clear. That section provides:

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"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."

As was stated in our opinion to you of September 5, 1968:

"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 of State has no alternative but automatically suspend the defendant's license for two years."

Leon V. Walker, Jr.
Assistant Attorney General

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