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29 M.R.S.A. §1312 - 10th
Operating Under The Influence Treatment Programs

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TO: C. Owen Pollard, Director, Bureau of Rehabilitation
FROM: Thomas E. Geyer, Assistant Attorney General
SUBJECT: Public Laws of 1977, Chapters 117, 438, 481 and 498

FACTS:

On May 4, 1977, P.L. 1977, c. 117 was approved by the Governor, the purpose of the Act being to transfer the Alcohol Treatment and Education Program of Operating under the Influence Offenders from the Office of the Secretary of State to the Department of Human Services.

On July 5, 1977, P.L. 1977, c. 438 was approved by the Governor. This Act amended 29 M.R.S.A. §1312, sub-§10, ¶A, 3rd ¶, 1st sentence, the purpose being to provide a mandatory rehabilitation program for persons convicted of a first offense for operating under the influence of intoxicating liquor or drugs, hereinafter referred to as a conviction for OUI.

On July 11, 1977, P.L. 1977, c. 481 was approved by the Governor. This Act revised certain motor vehicle related laws, one of which was 29 M.R.S.A. §1312, sub-§10, ¶A, 8th and 9th ¶¶, which changed the "prior conviction" provision from 10 years to 6 years.

On July 14, 1977, P.L. 1977, c. 498 was approved by the Governor. This Act repealed and replaced in its entirety 29 M.R.S.A. §1312, sub-§10, the effect being to again make discretionary the rehabilitation program for persons convicted of a first offense of OUI, and to again return to the ten year term as a basis for defining "prior convictions" for OUI violations. Chapter 498 also enacted the following language, cited as 29 M.R.S.A. §1312, sub-§10, ¶B, 4th ¶, relating to second convictions of OUI:

Upon receipt of an attested copy of the court record of such a conviction, the Secretary of State shall immediately suspend for a period of one year such a person's license or permit and privilege

to operate a motor vehicle. Such a person's license or permit and privilege to operate shall not be reinstated by the Secretary of State prior to 6 months from the date of suspension and until such time as the Secretary of State has received written notice that the person has satisfactorily completed the education program conducted by the Department of Human Services and where required by the Department of Human Services, has also satisfactorily completed an alcohol treatment or rehabilitation program approved or licensed by the Department of Human Services. In such a case, the Secretary of State shall have the authority to issue a restricted license or permit to such a person.

None of the pertinent sections cited in the foregoing were emergency legislation, i.e., all were to become effective 90 days after the Legislature adjourned.

QUESTIONS:

1. Did the enactment of P.L. 1977, c. 498 repeal P.L. 1977, c. 438 and P.L. 1977, c. 481 insofar as the latter two Chapters relate to 29 M.R.S.A. §1312, sub. §10?

2. Does P.L. 1977, c. 498 require that a person convicted of a second offense of OUI complete the education program conducted by the Department of Human Services before that person's license to operate a motor vehicle can be reinstated?

ANSWERS:

1. Yes. The enactment of P.L. 1977, c. 498 does repeal P.L. 1977, c. 438 and P.L. 1977 c. 481 insofar as the latter two Chapters relate to 29 M.R.S.A. §1312, sub. §10.

2. No. P.L. 1977, c. 498 does not require that a person convicted of a second offense of OUI complete the education program conducted by the Department of Human Services before that person's license to operate a motor vehicle can be reinstated.

REASONS:

1. The Legislature is not prohibited from enacting several pieces of legislation, contained in different Acts, affecting the same statute, during the course of a single session. However, in the case at hand, certain provisions of P.L. 1977, c. 438 and P.L. 1977, c. 481, affecting 29 M.R.S.A. §1312, sub. §10, conflict with similar provisions of P.L. 1977, c. 498, also affecting 29 M.R.S.A.

§1312, sub. §10. Since all three Chapters were to take effect 90 days after the Legislature adjourned, the question as to which provisions apply depends on two factors: (a) the date the Act was approved by the Governor; and (b) the specific action taken by the Legislature, i.e., amendment or repeal.

(a) P.L. 1977, c. 498, approved by the Governor after P.L. 1977, c. 438 and P.L. 1977, c. 481 were approved, was the most recent in time, thereby taking precedence.

(b) Section 1 of P.L. 1977, c. 498 states in part that "29 M.R.S.A. §1312, sub. §10, as last amended by P.L. 1977, c. 117, §1 is repealed..." It is important to note that the foregoing language does not also include "as last amended by P.L. 1977, c. 438 and P.L. 1977, c. 481." However, it must be presumed that the Legislature was cognizant of the prior enactment of Chapters 438 and 481, and further that the Legislature intended to repeal 29 M.R.S.A. §1312, sub. §10 in its entirety, regardless of the earlier enactment of the two conflicting Chapters.

Therefore, the provisions of P.L. 1977, c. 498 take precedence over similar but conflicting provisions of P.L. 1977, c. 438 and P.L. 1977, c. 481, with the result that the driver education course is optional for first convictions of OUI, and the time period for defining repeat offenders is ten years rather than six.

2. The first sentence of Chapter 498, 29 M.R.S.A. §1312, sub-§10, ¶B, ¶4 specifically provides that the Secretary of State shall suspend for a period of one year (emphasis added) the license of a person who is convicted of a 2nd offense of OUI. This paragraph further provides that the Secretary of State may, however, reinstate the license of the operator before the one year period of time has elapsed if: (a) at least six months has elapsed from the date of suspension, and (b) the Secretary of State receives notice that the person has completed the education program conducted by the Department of Human Services and where required by the Department has also completed an alcohol treatment or rehabilitation program. Under the circumstances set forth in (b), the Secretary of State may issue a restricted license. One year after suspension, however, the Secretary of State may reinstate a person's license, i.e., the education program is not mandatory after the year has lapsed.

TEG:bjw