

**Opinion No. 46.****Motor Vehicle Act—Penalties for  
Violations—Constitution.**

HELD: 1. There is no irreconcilable conflict between the provisions of Sections 1741.8, R. C. M., 1935, as amended by Chapter 182, Laws 1937, and Section 2 of Chapter 129, Laws, 1937.

2. The provisions of Chapter 129, Laws, 1937, are automatic and mandatory, while the provisions of Section 1741.8 as amended are discretionary.

3. Neither Section 1741.8, R. C. M., 1935, nor Chapter 129, Laws, 1937, is unconstitutional.

April 14, 1939.

Mr. Ernest E. Fenton  
County Attorney  
Hysham, Montana

Dear Sir:

You have submitted the following questions for opinion:

1. "Is there an irreconcilable conflict between the provisions of Section 6, Chapter 182, Laws of 1937, and Section 2, Chapter 129, Laws of 1937?"

Section 6, Chapter 182, Laws of 1937, amends Section 1741.8, Revised Codes of Montana, 1935, relating to penalties imposed for violation of various provisions of the Highway Patrol Act. As amended, that section prescribes the penalties for (1) all offenses other than driving in a reckless manner or while intoxicated, (2) for

driving in a reckless manner, and (3) for driving while intoxicated, and continues:

"In addition to the above mentioned penalties, upon conviction of a motor vehicle driver of any of the above mentioned offenses, it shall be at the discretion of the highway patrol board, justice of the peace, or district court judge to order the offender to refrain from operating a motor vehicle for a stated period of time. \* \* \* \* In the event of such order to refrain from driving, an appeal may be had to any court of competent jurisdiction for a review of the order."

Under this section, the suspension of the license is within the discretion of the named officials whenever they deem it justified.

Section 2, Chapter 129, Laws of 1937, is in part:

"The motor vehicle operator's and/or chauffeur's license and all of the registration certificates of any person who shall by a final order or judgment have been convicted of or shall have pleaded guilty to or shall have forfeited any bond or collateral deposited to secure the appearance for trial of the defendant (where such forfeiture shall not have been vacated) for any of the following offenses hereafter committed, to-wit:

"Operating a motor vehicle while under the influence of intoxicating liquor or narcotic drugs in violation of Section 1746.1 of the Revised Codes of the State of Montana of 1935; \* \* \* \* shall be suspended forthwith without notice or hearing by the registrar of motor vehicles or other officer in charge of the issuance of motor vehicle operator's and/or chauffeur's licenses and registration certificates, hereinafter called the registrar, and shall remain so suspended and shall not at any time thereafter be renewed, nor shall any such license be thereafter issued to him or any motor vehicle be thereafter registered in his name until he shall have given proof of his ability to respond in damages for any liability thereafter incurred, resulting from the ownership, maintenance, use or operation thereafter of a motor vehicle. \* \* \*"

It is apparent that Section 1741.8 as amended provides one of the penalties that may be imposed for violation of the law, while the operation of Chapter 129, Laws of 1937, is automatic and mandatory and the operator's license and certificate of registration are suspended until the operator has satisfied the requirements of the statute. If the court under authority of Section 1741.8 as amended ordered the suspension of an operator's license as a part of the penalty for violation of Section 1741.7, the suspension would be effective whether the convicted person had given satisfactory evidence of his financial responsibility or not. But Chapter 129 would also be applicable if he was not able to satisfy the requirements of that statute. There is no conflict between the two acts and both are to be applied and enforced within their individual sphere.

2. "Do the provisions of these acts violate the Constitution of the State of Montana or of the United States?"

The police power of the state permits the regulation of the use of its highways, (State ex rel Clarette v. District Court, 107 Mont. 489, 86 Pac. 2d., 750), and the licensing of motor vehicles and operators thereon, and the power to license operators imparts the power to withhold or revoke the license on noncompliance with prescribed conditions. (1 Blashfield Cyc. of Automobile Law 392.) The Legislature may provide for the suspension of licenses whenever there is good cause to believe that the licensee's use of a motor vehicle will be a detriment to the public safety, welfare, or morals. (Glass v. State Board of Public Roads 115 A. 244.) And the conviction of a person for operating a motor vehicle in a reckless manner or while intoxicated or under the influence of intoxicating liquor gives good cause for such suspension. (Keck v. Superior Court, 293 Pac. 128; People v. Cohen 217 N. Y. S. 726; Commonwealth v. Finch 186 A. 65; Emmertson v. Tax Commission 72 Pac. (2d) 467.)

Such statutes as Chapter 129 have been enacted in more than twenty states of the United States and have uniformly been held to be constitutional under the due process and equal protection clauses of the Constitution

and valid enactments as safety regulations. (*Garfield Trucking Inc., v. Hoffman*, 177 A. 882; *Halverson v. Ellsberg*, 277 N. W. 535; *Rosenblum v. Griffin*, 197 A. 701.) The revocation or suspension is mandatory and effective until compliance with the act is proved and a statute authorizing such revocation and compliance does not take property without due process of law and is within the legislative power. (*Keck v. Superior Court*, *supra*; *LaPlante v. State Board of Public Roads*, 131 A. 641; *People v. Hartnett*, 224 N. Y. S. 97.) Nor can it be contended the licensee was denied a hearing; he is deemed to have had his day in court at the time of his trial and conviction, (*State v. Livermore*, 144 A. 867). Nor is there an improper delegation of judicial power to the registrar of motor vehicles because his actions are merely ministerial and he is merely invested with the power to ascertain the facts and conditions to which the statutory principles apply, (*Thompson v. Smith*, 154 S. E. 579; *Tryon v. Willbank*, 255 N. Y. 27).