

2. Chapter 129, Laws 1937, is not applicable to violators of Section 1741.7, Revised Codes of Montana, 1935.

May 3, 1939.

Mr. T. F. Walsh
Deputy Registrar
Deer Lodge, Montana

Dear Sir:

You have asked:

1. If Section 1741.7, Revised Codes of Montana, 1935, as amended by Chapter 182, Laws, 1937, and Section 1746.1, Revised Codes of Montana, 1935, can be reconciled?

This question was raised in *State v. Schnell*, 88 Pac. (2d), 19, 107 Mont. 579, and the court held that Section 1741.7 "applies to those who drive motor vehicles on the highways outside of incorporated cities and towns 'while intoxicated,' whereas Section 1746.1 reaches those who drive a motor vehicle 'while in an intoxicated condition or under the influence of intoxicating liquor * * *'" There is no irreconcilable conflict between the two. We hold that the two acts must be read together. When so considered, a prosecution for driving a motor vehicle outside of incorporated cities and towns while intoxicated must be brought under Section 1741.7. A prosecution for driving a motor vehicle over any highway or street within or without a municipality while under the influence of intoxicating liquor or any drug or narcotic must be based upon Section 1746.1."

2. Does a conviction of a violation of subsection 11 of Section 1741.7 apply to Section 2, Chapter 129, Laws of 1937?

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

"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 forfeited any bond or collateral deposited to secure the appearance for trial of the defendant (when such forfeiture shall not have been vacated) for any of the following offenses hereafter committed, to-wit:

Opinion No. 57.

Motor Vehicles—Financial Responsibility Act—Intoxication—Licenses.

HELD: 1. Sections 1741.7 and 1746.1, Revised Codes of Montana, must be read together.

“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, 1935 * * *.”

In construing an act of the Legislature, the entire statute must be given meaning and words used in their ordinary sense. (In *Re. Wilson's Estate*, 102 Mont. 178.) This statute is in the nature of a penal statute and while the common law rule of strict construction of penal statutes is no longer the rule in this state (Sections 10519, 10520, 10710, R. C. M. 1935), all uncertainties must be resolved in favor of the accused (*State ex rel. Kurth v. Grinde*, 96 Mont. 608), and the provisions of statutes which impose a penalty are not to be extended by implication (*Shubat v. Glacier County*, 13 Mont. 160), even though the spirit of the law would indicate the strict construction of an unambiguous statute should be extended. (*Cruse v. Fischl*, 55 Mont. 258; *State Highway Commission* 82 Mont. 362). Whenever the language of a statute is plain, simple, direct and unambiguous the clearly expressed intent must be given effect (*Fergus Motor Co. v. Sorenson*, 73 Mont. 122; *State ex rel. Dufresné v. Leslie*, 100 Mont. 449), and should be enforced according to its clear language (*United Missouri River Power Co. v. Wisconsin Bridge and Iron Co.* 44 Mont. 343).

Chapter 129 was passed by the Twenty-fifth Legislative Assembly at a time when both Sections 1741.7 and 1746.1 were a part of the laws of this state. The Supreme Court of Montana has held that the Legislature “seems to have recognized a distinction” between the two statutes. Perhaps it is difficult to see why a man convicted of driving “while intoxicated” under an information based on Section 1741.7 should be exempt from the provisions of Chapter 129, when a person convicted of operating a motor vehicle “while in an intoxicated condition or under the influence of intoxicating liquor” under an information based on Section 1746.1 is subject to the provisions of Chapter 129, but under the rules of construction above cited I must hold that the Legislature has intended a distinction.

Therefore, it is my opinion that Section 2, Chapter 129, Laws 1937, is inapplicable to persons who have been convicted, plead guilty or forfeited an appearance bond for a violation of Section 1741.7.