

September 27, 1943.

Mr. John E. Henry
 Registrar of Motor Vehicles
 Deer Lodge, Montana

Dear Mr. Henry:

You have requested my opinion concerning the effect of Chapters 198 and 199, Laws of 1943, in regard to your duties as Registrar of Motor Vehicles.

In your letter, you call attention to Chapter 129, Laws of 1937. This chapter, in Section 2, provides that any person convicted of the offense defined in Section 1746.1, Revised Codes of Montana, 1935, shall have his "motor vehicle operator's and/or chauffeur's license" suspended by the Registrar of Motor Vehicles until the person so convicted furnish proof of his ability to respond in damages for any liability thereafter incurred.

Section 1746.1, Revised Codes of Montana, 1935, was amended by Chapter 198, Laws of 1943, to read as follows:

"It shall be unlawful for any person while in an intoxicated condition or under the influence of intoxicating liquor or any drug or narcotic to drive, operate or run upon or over any highway or street or public thoroughfare within the State of Montana, whether within or without a municipality, any automobile, truck, motorcycle or any other motor vehicle."

Section 1741.7, Revised Codes of Montana, 1935, provides that any person "while driving a motor vehicle or other vehicle while intoxicated" was guilty of a crime.

The Supreme Court of Montana in the case of *State v. Schnell*, 107 Mont. 579, 88 Pac. (2nd) 19, held that Section 1747.7 "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.'" This meant that there was a distinction between prosecution brought under the two sections and this office held in Opinion No. 57 of Volume 18, Report and Official Opinions of Attorney General that Chapter 129, Laws of 1937, did not apply to a

Opinion No. 134

Motor Vehicles—Financial Responsibility Act—Intoxication—Licenses.

Held: It is the duty of the Registrar of Motor Vehicles to apply the provisions of Section 2 of Chapter 129, Laws of 1937, to any person who shall by a final order or judgment have been convicted of operating a motor vehicle "while under the influence of intoxicating liquor or any drug or narcotic" as provided in subsection 41 of Section 8 of Chapter 199, Laws of 1943, or who shall be convicted of operating a motor vehicle "while in an intoxicated condition or under the influence of intoxicating liquor or any drug or narcotic" as provided in Section 1746.1, Revised Codes of Montana, 1935, as amended by Chapter 198, Laws of 1943.

conviction under Section 1741.7, Revised Codes of Montana, 1935.

Chapter 199, Laws of 1943, repealed Section 1741.7, Revised Codes of Montana, 1935, and substituted in lieu of Section 1741.7, Section 8 of said chapter which provides in subsection 41 that the following act constitutes a crime.

“Driving or operating an automobile, truck, motorcycle or any other motor vehicle upon or over any highway or street or public thoroughfare within the State of Montana, whether within or without a municipality, while under the influence of intoxicating liquor or any drug or narcotic.”

Chapter 199, Laws of 1943, provided in part a penalty in the following language:

“For the offense of driving while under the influence of intoxicating liquor or any drug or narcotic, the offender shall be punishable as provided by Section 1746.2 of the Revised Codes of Montana, 1935, and subject to the provisions of Chapter 129 of the session laws of Montana, 1937.”

It is therefore my opinion that it is the duty of the Registrar of Motor Vehicles to apply the provisions of Section 2 of Chapter 129, Laws of 1937, to any person who shall by a final order or judgment have been convicted of operating a motor vehicle “while under the influence of intoxicating liquor or any drug or narcotic” as provided in subsection 41 of Section 8 of Chapter 199, Laws of 1943, or who shall be convicted of operating a motor vehicle “while in an intoxicated condition or under the influence of intoxicating liquor or any drug or narcotic” as provided in Section 1746.1, Revised Codes of Montana, 1935, as amended by Chapter 198, Laws of 1943.

Sincerely yours,
R. V. BOTTOMLY
Attorney General