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October 5, 1948

Gen. Charles L. Sheridan,  
Supervisor  
Montana Highway Patrol  
Helena, Montana

Dear General Sheridan:

You have asked this office for an opinion as to whether or not there is any conflict between the revocation of driver's license provisions of Chapter 267, Laws of 1947, and Chapter 129 Laws of 1937, as amended.

Chapter 129, Laws of 1937, is the so-called Financial Responsibility Act, and is an early draft of the Model Act promulgated by the National Conference on Street and Highway Safety. In Section 1 thereof is found the purpose of the Act in the following words:

"This act shall in no respect be considered as a repeal of any of the provisions of the state motor vehicle code or laws, but shall be construed as **supplemental thereto.**"  
(Emphasis supplied.)

At the time this Act was passed by the legislature, the only penalties for driving under the influence of intoxicating liquor or narcotic drugs were contained in Section 1746.1 R.C.M. 1935, et seq., which provided for fine and imprisonment and provided that a person convicted therefor could not drive the vehicle for varying periods, but did not make such "not driving" penalty mandatory.

The title of Chapter 129, Laws of 1937, makes clear the legislative intent when it says:

"An Act to Eliminate Reckless and Irresponsible Drivers from the Highways. . . ."

In other words, the legislature found that Sections 1746.1, R.C.M. 1935, Et Seq., were not sufficient to take care of drunken drivers and en-

**Opinion No. 143**

**Highway Patrol Board—Registration Certificates—Revocation Suspension—Driver's Licenses—Financial Responsibility.**

**Held:** That there is no conflict between Chapter 139 Laws of 1937, as amended, and Chapter 267, Laws of 1947. Under Chapter 267 the Highway Patrol Board has the full and exclusive authority of revocation and suspension of operators' and chauffeurs' licenses, and the registrar of motor vehicles has the sole responsibility of revoking all registration certificates of automomo-

acted the Financial Responsibility Act as a "supplemental act", being "... one designed to improve an existing statute by adding something thereto without changing the original text." (First State Bank vs. Bottineau County Bank, 56 Mont. 363; State vs. Bowker, 63 Mont. 1) The particular additional penalty, which was added by Chapter 129 that is here involved, is Section 2 thereof which provides:

"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 violations of Section 1746.1 of the Revised Codes of the State of Montana of 1935;

Homicide arising out of the operation of a motor vehicle; reckless driving, resulting in personal injury or damage to property;

... 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 operators' and or chauffeurs' 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 for personal injury to or death of any one person in the amount of at least five hundred dollars (\$500.00), and subject to the aforesaid limit for any one person injured or killed of at least one thousand dollars (\$1,000.00) for personal injury to or the death of two or more persons

in any one accident, and for damage to property in the amount of at least two hundred and fifty dollars (\$250.00) resulting from any one accident. . . ." (Emphasis supplied)

By Chapter 199 of the Laws of 1943, in Section 9 thereof, the legislature re-enacted the penalty provisions of Section 1746.2, R.C.M., 1935, "subject to the provisions of Chapter 129 of the Session Laws of Montana of 1937", and provided further, as an additional penalty, that it was in the discretion of the justice of the peace or the district court judge to "revoke the driver's license for a period of not more than one (1) year." This again appears to be a "supplemental act." It is to be noted at this point that while the legislature in 1943 changed the penal provision of losing the driver's license and made it more definite, the requirement of financial responsibility for civil damages contained in Section 2, Chapter 129 of the laws of 1937, was expressly retained. (Sec. 9, p. 348, par. 1, Laws of 1943).

Finally, the legislature enacted Chapter 267 of the Laws of 1947. In that act the responsibility for issuing and revoking the drivers' licenses is definitely and completely placed in the hands of the Montana Highway Patrol Board. Note that the Highway Patrol Board thus becomes the "other officer in charge of the issuance of motor vehicle operators' and/or chauffeurs' licenses" as contemplated in Sec. 2, Chapter 129, Laws of 1937, as underlined above. In its final Section 47, all acts and parts of acts in conflict therewith are repealed.

Sections 30 and 31 of Chapter 267, Laws of 1947, are the revocation and suspension sections of that Act and place the definite responsibility for revocation in the hands of the Montana Highway Patrol Board. These two sections cover the same grounds for revocation and suspension as were covered in all of the prior laws referred to above and have added some new reasons for revocation and suspension in addition thereto.

The situation may be briefly summed up then as follows: The criminal prosecution for revocable offenses starts with the courts. The

courts are required to send a record of the conviction and the license, and a record of bond forfeiture, to the Montana Highway Patrol Board under Section 29, Chapter 267. The Highway Patrol Board then must either revoke or suspend, in accordance with Sections 39 or 31 of Chapter 267 of the Laws of 1947, and before any driver's license of any kind can be re-issued to the operator, he must comply with the civil responsibility features of the Financial Responsibility Act of 1937. In other words, we have the situation of criminal and civil liabilities and responsibilities running concurrently.

It is my opinion, therefore, that there is no conflict between Chapter 139, Laws of 1937, as amended, and Chapter 267, Laws of 1947. Under Chapter 267, the Highway Patrol Board has the full and exclusive authority of revocation and suspension of operators' and chauffeurs' licenses, and the registrar of motor vehicles has the sole responsibility of revoking all registration certificates of automobiles owned by the offenders. In addition to this, before the Highway Patrol Board can re-issue an operator's or chauffeur's license, the offender must file evidence of financial responsibility with the registrar of motor vehicles.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General