

Opinion No. 10

MOTOR VEHICLES—Safety Responsibility Act—Duties of Supervision—Sections 53-419, 53-422, Revised Codes of Montana, 1947.

HELD: The duties of the highway patrol supervisor under the Motor Vehicle Safety Responsibility Act do not include resolving questions of civil liability of operators or owners of motor vehicles for damages.

July 22, 1963

Mr. Alex B. Stephenson, Supervisor
Montana Highway Patrol
Colorado Building
Helena, Montana

Dear Mr. Stephenson:

You have submitted the following question regarding interpre-

tation of the Motor Vehicle Safety Responsibility Act (Chapter 4, Title 53, R.C.M., 1947, as amended):

“Is the issue of the civil liability of the owner or operator of a motor vehicle involved in an accident resulting in death or injury to a person or persons, or damage to property in excess of One Hundred Dollars to be resolved by the highway patrol supervisor prior to suspension of a license?”

A consideration of your question is necessarily prefaced by determination of the purpose and interest of the Act. Section 53-456, R.C.M., 1947, as amended, provides with reference to the Act:

“This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it.”

As the great majority of our sister states have enacted the same or substantially similar legislation, reference to their court’s interpretations is not only desirable, but mandatory.

Exemplifying the usual interpretation is *Hughes v. Department of Public Safety* (La. 1955) 79 So. 2d 129, which holds:

“In response to the social problem posed by uncompensated victims of financially irresponsible motorists, all forty-eight States have passed either compulsory insurance or financial responsibility acts. Forty-two States have financial responsibility acts similar to ours, LSA-R.S. 32:851 et seq., requiring the operator or owner of a motor vehicle involved in an accident to post security (if he has no liability insurance or equivalent in force at the time of the accident) to pay resultant damages if subsequently cast therefor; or, on failure to post same, to undergo suspension of his operator’s driver’s license and/or owner’s vehicle registration. * * * The constitutionality of such Acts and of such license suspension provisions has been upheld without exception. (citing cases)

“* * * It is specifically set forth in the Act that the Department of Public Safety is to suspend the **driver’s license of all operators** involved in a motor accident who do not comply with

the financial responsibility provisions without exception and without regard to legal liability. Although this may work a financial hardship on some motorists, the fundamental legislative purpose was to alleviate the financial hardship of those injured in an accident and the resultant social problem, and to forbid future access to the highways to financially irresponsible drivers involved in an accident unless they complied with the Act. This is also the jurisprudence of other States with similar statutes, see Annotation 35 A.L.R. 2d 1011. (Emphasis found in opinion)

“Thus regardless of whether Miss Hughes was free from fault or not, if she was uninsured at the time of the accident and does not post bond as required by the Act, her license as operator **must** be suspended, and also her registration as owner.” (Emphasis supplied)

Specifically, in addition to the last paragraph quoted from **Hughes**, above, on the question of the supervisor’s pertinent duty, the case of *Gillaspie v. Department of Public Safety* (Tex. 1933) 259 S.W. 2d 177, states in point:

“We agree with the Court of Civil Appeals in its decision that the Act does not authorize the Department to determine questions of liability or fault on the part of the persons involved in an accident before fixing the amount of security required and suspending the license of operators and registration of owners. * * * Questions of liability or fault are for the courts to determine in suits brought for that purpose. * * * It follows that the trial court was in error in setting aside the order suspending D. C. Gillaspie’s registration on the grounds that the evidence showed he was not liable for the damages caused by his minor son.”

and *Moorehead v. Mississippi Safety Responsibility Bureau* (Miss. 1958) 99 So. 2d 446:

“The question of negligence has nothing to do with the matter. The requirement of financial responsibility does not in any sense pre-determine the question of liability, which could only be decided in a judicial proceeding. It simply furnishes an

added protection to the public and better assures the safety of our highways, and is not dependent upon the operator's skill or lack of it. The statute is not unreasonable in failing to require a showing of negligence prior to suspension of the license. (Citing cases)' "

"* * * On the trial of that case on appeal to the circuit court, the court refused to permit Collins to introduce evidence to show that he was not guilty of negligence in connection with the accident, and this Court upheld the action of the circuit court. We think that case is identically in point in the questions raised by the appellant in the case at bar and settles the matter contrary to the contentions of the appellant. The judgment of the lower court is therefore affirmed." (Emphasis supplied)

and *Sullivan v. Cheatham* (Ala. 1956) 84 So. 2d. 374:

"As we view it, the Act does not invest the Director with a discretion to determine who shall be required to post security for a given accident. The purpose of the Act is clearly to require and establish financial responsibility for **every** owner or operator of a motor vehicle 'in any manner involved in an accident.' To allow the Director, through his officers and agents, to decide the civil responsibility for accidents occurring on the highways would be a usurpation of the judicial functions. The Act is designed to protect all persons having claims arising out of highway accidents." (Emphasis found in opinion).

To the like effect are:

Rosenblum v. Griffin (N.H. 1938) 197 Atl. 701
Berberian v. Lussier (R.I. 1958) 139 Atl. 2d 869
Haith v. Commissioners (D.C. 1957) 135 Atl. 2d 458
 5 A Am Jur., Highways and Traffic, p. 332

The question is of first impression in Montana. Executive construction by your department has been in accord with the views of authority and the executive construction heretofore generally acquiesced in to conclude that the duties of the supervisor under the act do not include resolving questions of the civil liability of an owner or operator. I so hold.

In so holding, I am not unmindful of the language in *Escobedo v. State Department of Motor Vehicles* (Cal. 1950) 222 Pac. 2d 1, which, by dicta without supporting authority, holds that "culpability" should be determined by the administrative arm, and the discussion in *People v. Nothaus* (Colo. 1961) 363 Pac. 2d 180, holding the Colorado act unconstitutional. In my opinion these decisions are exceptions to the well-reasoned majority rule and a departure from the accepted constitutional distinctions between "right" and "privilege".

Very truly yours,

FORREST H. ANDERSON
Attorney General