

VOLUME NO. 37

OPINION NO. 120

ALCOHOL - Elements of DWI; MOTOR VEHICLES - DWI; REVISED CODES OF MONTANA, 1947 - Sections 32-2142, 32-2142(a), (c), 32-2142(2); Laws of Montana (1977), ch. 298, sec. 1; Laws of Montana (1977), ch. 430, sec. 1.

HELD: In order to sustain a conviction for driving under the influence of alcohol, the state must prove actual physical control of a motor vehicle while under the influence of alcohol. Section 32-2142 does not require proof that a person was under the influence of alcohol to a degree which renders him incapable of safely driving a motor vehicle.

14 March 1978

Harold F. Hanser, Esq.  
Yellowstone County Attorney  
Yellowstone County Courthouse  
Billings, Montana 59101

Dear Mr. Hanser:

You have requested my opinion on the following question:

In order to sustain a conviction for driving under the influence of alcohol (DWI), does section 32-2142, R.C.M. 1947, as amended by the 1977 legislature, require proof of intoxication to a degree which renders the person incapable of safely driving a motor vehicle, or only proof of actual physical control of an automobile while under the influence of alcohol?

Prior to amendment by Laws of Montana (1977), ch. 430, sec. 1, the offenses of driving under the influence of alcohol and driving under the influence of drugs were contained in separate subsections:

It is unlawful...for any person who is under the influence of intoxicating liquor to drive or be in actual physical control of any motor vehicle upon the highways of this state.

Section 32-2142(a), R.C.M. 1947.

It is unlawful...for any person who is a habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle to drive a motor vehicle within this state.

Section 32-2142(c), R.C.M. 1947.

Chapter 430 redesignated the subsections and combined the definition of the offenses into a single subsection:

It is unlawful...for any person who is under the influence of alcohol or any narcotic drug or any other drug to a degree which renders him incapable of safely driving a motor vehicle to drive or be in actual physical control of a motor vehicle within this state. The fact that any person charged with a violation of this subsection is or has been entitled to use such a drug under the laws of this state does not constitute a defense against any charge of violating this subsection.

Section 32-2142(3), R.C.M. 1947 (1977 Supp.).

You question whether the qualifying language, "to a degree which renders him incapable of safely driving a motor vehicle," now applies to alcohol as well as "any other drug," thereby adding a new element to the offense of driving under the influence of alcohol.

The statute as amended is ambiguous because it is susceptible of more than one interpretation. The qualifying language may be construed as modifying only "any other drug" or as relating to all substances listed in the subsection. In resolving this ambiguity the intention of the Legislature controls. Hammill v. Young, 168 Mont. 81, 84, 540 P.2d 971 (1975).

In this regard the title of the act is relevant because it is "indicative of the legislative intent in passing it." Nangle v. Northern Pac. Ry., 96 Mont. 513, 522, 32 P.2d 11 (1934). The title is also important because Article V, section 11(2) of the 1972 Montana Constitution requires that the subject of a bill be "clearly expressed in its title." The title of chapter 430 enumerates those things the Legislature sought to accomplish in amending sections 32-2142, 31-145, 146 and 149:

AN ACT TO REVISE THE PENALTIES FOR DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; TO CLARIFY THAT HABITUAL USERS WHO DRIVE ARE NOT SUBJECT TO CRIMINAL PENALTIES UNLESS THEY ARE UNDER THE INFLUENCE WHEN THEY DRIVE; TO PROVIDE FOR SUSPENDED EXECUTION OF SENTENCE CONDITIONED UPON EDUCATION OR TREATMENT; AMENDING SECTIONS 31-145, 31-146, 31-149, AND 32-2124, R.C.M. 1947.

Changing the elements of the offenses to require that a person be under the influence of alcohol or narcotic drugs "to a degree which renders him incapable of safely driving a motor vehicle" was not a stated purpose.

The Legislature did not intend this result. This is made clear by comparing section 31-2142(2) with sections 31-146 and 149. Both sections were also amended by the act, and because they relate to the same general subject, must be construed together with section 32-2142(2). See Aleksich v. Industrial Accident Fund, 116 Mont. 127, 137, 151 P.2d 1016 (1944). Section 31-146 provides for mandatory revocation of drivers licenses upon conviction of or forfeiture of bail for certain offenses, including the following:

Driving a motor vehicle while under the influence of alcohol or narcotic drug, or willfully or knowingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle or a combination thereof....

Section 31-149(b) specifies the period of such revocation:

[W]hen any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or narcotic drugs, or knowingly or willingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle or a combination thereof, the division shall, upon receiving a report of such conviction or forfeiture of bail or collateral not vacated, suspend the license or driving privilege of such person for a period of 6 months.

The qualifying language in each case applies only to being under the influence of "any other drug," and is compelling evidence that the Legislature intended to retain the same distinction in section 31-2142(2).

THEREFORE, IT IS MY OPINION:

In order to sustain a conviction for driving under the influence of alcohol, the state must prove actual physical control of a motor vehicle while under the influence of alcohol. Section 32-2142 does not require proof that a person was under the influence of alcohol to a degree which renders him incapable of safely driving a motor vehicle.

Very truly yours,

MIKE GREELY  
Attorney General