

"Withdrawal" includes payment to a third person pursuant to directive of a party."

A "multiple party account" is defined at subparagraph (d) of the same section as an account in the names of two or more persons, one or more or all of whom may make withdrawals, or an account in the name of one or more parties as trustees for one or more beneficiaries even though no mention is made of a right of withdrawal by a beneficiary. At least one party to such multiparty account must be a member of the credit union in which the account is established.

On the basis of this statute it appears that Opinion No. 4650 should be modified by acknowledging the right of the credit union to make direct payment from a multiple party account to a third person such as a utility company for the amount of a bill pursuant to the directive of a party having a present right of withdrawal in a multiple party account.

FRANK J. KELLEY,
Attorney General.

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CRIMINAL LAW: Probation, surrender of operator's license:

COURTS: Probation, surrender of operator's license:

MOTOR VEHICLES: Suspension and revocation of operators' licenses, enforcement of probation in Recorder's Court:

The Department of State has the authority to suspend or revoke an operator's license for reasons enumerated in the Michigan Vehicle Code.

A court has the authority to require the surrender of an operator's license as a condition of probation.

Operation of a motor vehicle by a probationer whose operator's license is in possession of a court as a term of his probation, is not the operation of a motor vehicle while said license "has been suspended or revoked."

Probationary orders of Recorder's Court, Traffic and Ordinance Division, may be enforced throughout the state.

No. 4454

March 30, 1970.

Mr. James M. Hare
Secretary of State
Michigan Department of State
Treasury Building
Lansing, Michigan 48913

You have requested my opinion on the following questions:

(1) Can a court (any court) retain in its possession a driver's license or does the Secretary of State have the authority to demand that such a driver's license be forwarded to the Secretary of State Department? If so, by what manner or means can the Secretary of State Department enforce its request?

(2) In view of Public Act 300 of 1949 as amended, giving the Secretary of State exclusive authority to issue and suspend drivers' licenses, does not a court's ruling of no driving probation including the taking and holding by the court of an individual's driver's license cause an infringement on the authority of the Secretary of State? If so, is this not outside the jurisdiction of the courts and thereby unconstitutional?

(3) If the courts do have the authority to suspend drivers' licenses under a no driving probation, must the Secretary of State Department charge a motorist, who drives while under a no driving probation, with the violation of driving while his license is suspended, and consequently revoke such an individual's license as required by the Motor Vehicle Code, Section 904, M.S.A. § 9.2604?

(4) Although the jurisdiction of the Recorder's Court of the City of Detroit is limited to criminal matters and certain other specific ordinance violations within the City of Detroit, it is not a state court of record having state wide jurisdiction to enforce its contempt of court rulings; and as a subsidiary or branch of the Recorder's Court, does the Traffic Court for the City of Detroit have the same status for its contempt of court actions?

Your first and second questions are interrelated and will be treated together. First of all, the authority of the Secretary of State to suspend or revoke a license to operate a motor vehicle as well as require upon suspension or revocation the surrender of possession of the license to the Department of State is set forth in the following statutes.

"Section 319. The department shall forthwith suspend for a period of not less than 90 days nor more than 2 years after the expiration of the sentence, not including periods of probation, the license of any person upon receiving a record of the conviction of such person of any of the following crimes, whether such conviction be had under any state law or local ordinance:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle.

(2) Conviction or forfeiture of bail for violation of section 625 (a) or 625 (b).

(3) Perjury or the making of a false affidavit to the commissioner or department under this act or any other law of this state requiring the registration of motor vehicles or regulating their operation on highways.

(4) Any crime punishable as a felony under the motor vehicle laws of this state or any other felony in the commission of which a motor vehicle was used.

(5) Conviction or forfeiture of bail upon 3 charges of reckless driving all within the preceding 12 months.

(6) A conviction of a driver of a motor vehicle involved in an accident resulting in the death or injury of another person, upon a

charge of failing to stop and disclose his identity at the scene of such accident.”¹

“Section 320. (a) Whenever the commissioner has reason to believe that any licensed operator or chauffeur is or has become incompetent to drive a motor vehicle or is or has become afflicted with mental or physical infirmities or disabilities rendering it unsafe for such person to drive a motor vehicle or as a driver has in 1 or more instances been involved in an accident resulting in the death of a person, or within a 24-month period has been involved in 3 accidents resulting in personal injury or damage to the property of any person in each accident in excess of \$200.00 and the official police report indicates any moving violation on the part of the driver or drivers involved in each of the accidents; or whenever any person has charged against him a total of 12 or more points as provided in section 320a within a period of 2 years, the commissioner, after notice as hereinafter provided to such person, may conduct an investigation and require an examination of such person in the county wherein such person may reside, and upon good cause appearing thereon, may thereupon recommend to the department the suspension or revocation of the license of such person or may require the immediate surrender of the license of each person, which together with a recommendation as to the period of suspension or revocation, shall be forwarded to the department. The commissioner shall, in all cases, prescribe the period of suspension and the recommendation of the commissioner in the premises shall, in all cases be binding upon and followed by the department.

(b) Service of notice shall be made by regular mail to the last known address of the licensee as shown on the most recent license application or change of address on the license as provided by section 315.

(c) No license shall be suspended under this section for a period of more than 1 year.

(d) The reexamination may be held by the director in accordance with the provision of this section notwithstanding any suspension, revocation or denial of an operator's or chauffeur's license under this section, under section 319 or under chapter 5 or under any other law of this state, and any suspension ordered pursuant to the provision of this section shall be in addition to any other suspensions.”²

“Section 321. The department upon suspending or revoking a license shall require that such license shall be surrendered to and be retained by the department, except that at the end of the period of suspension such license so surrendered shall be returned to the licensee.”³

¹ Sec. 319, Act 300, P.A. 1949, as amended; M.C.L.A. § 257.319; M.S.A. 1968 Rev. Vol. § 9.2019.

² Sec. 320, Act 300, P.A. 1949, as amended; M.C.L.A. § 257.320; M.S.A. 1969 Cum. Supp. § 9.2020.

³ Sec. 321, Act 300, P.A. 1949; M.C.L.A. § 257.321; M.S.A. 1968 Rev. Vol. § 9.2021.

"Section 321b. Any policeman, law enforcing agent or judicial officer who is informed by an official communication from the secretary of state that the license of an operator or chauffeur has been suspended or revoked under the provisions of this act, shall obtain such suspended or revoked license from the operator or chauffeur and forward it to the secretary of state."⁴

The authority of the Secretary of State in relation to these statutes is unquestioned. However, this authority is limited to that conferred. See, O.A.G. 1933-1934, page 54. As a result, the Department of State can suspend or revoke an operator's license for only those reasons, conditions and circumstances as set forth in the preceding quoted sections. It is clear, however, that the power to suspend and revoke operators' licenses is in the Department of State. The statutes repose no such power in any other authority.

Secondly, your question asks the authority of the Michigan courts in matters other than those in the authority of the Secretary of State to take and hold a person's operator's license as a condition of probation. In O.A.G. 1951-1952, No. 1512 p. 425 et. seq. a former Attorney General concluded, after reviewing the then existing statute relating to probation that a taking and holding of an operator's license as an "other lawful condition of probation" was valid. Similar conclusions were reached with regard to Probate Courts in matters of juvenile affairs,⁵ and with municipal courts.⁶

The courts, in such cases, are acting independently of the Department of State. They are not presuming in any way to interfere with them. When a judge has a case which, in addition to calling for probation as the (or as part of the) sentence, involves either driving as a contributing factor to other crime, or other abuse of the driving privilege, he may impose "no driving" as a term or condition of probation for a given period, and require "deposit" of the defendant's operator's license "with the court, strictly as evidence of his good faith." 1955-56 (Vol. 1) O.A.G. 508, 510.

In such situations, the court has impounded the operator's license. It is still the latter's license, and has *not* been suspended, because the courts, indeed, do not appear to have the power, under Michigan statutory law, to suspend or revoke an operator's license.⁷

There is nothing in the character of the court's actual mere voluntary, or "good faith," possession of a defendant's operator's license, that would (in the event of the Department of State acting to suspend a license on account of the subject, or a subsequent, offense) interfere with the following seemingly mandatory language of Section 321 of the Michigan motor vehicle code, *supra*, which provides: "The department upon suspending

⁴ Sec. 321b, Act 332, P.A. 1968; M.C.L.A. § 257.321b; M.S.A. Cum. Supp. § 9.2021(2).

⁵ O.A.G., 1952-1954, No. 1631, p. 115.

⁶ O.A.G., 1955-1956, Vol. I, No. 2246, p. 508.

⁷ Please see the reference in aforesaid 1955-56 (Vol. 1) O.A.G. 2246, p. 508 at 509, to an apparently unpublished Attorney General's letter (January 10, 1952) to the Secretary of State, which is quoted as saying, *inter alia*, as follows: "While a court does not possess the power or authority to revoke or suspend a driver's license . . ."

or revoking a license shall require that such license shall be surrendered to and be retained by the department . . ." When the Department of State exercises its authority granted by law to revoke or suspend an operator's license, the person whose license is thus affected is required to surrender it to the Department of State⁸ or it may be obtained from him.⁹

The answer, then, to your first question is that a court may require and retain possession of an operator's license as a lawful condition of probation. In addition, the Department may also obtain possession of those licenses which have been actually suspended or revoked by the Department when voluntarily turned over to the Department of State by the court, or where the probationary period is terminated. With respect to your second question, when the courts so require the surrender of a license as a probationary condition there is no infringement upon the Department's statutory authority; nor do we see any basis for a constitutional issue.

Turning to your third question, you have asked, in effect, when a probationer, whose license is in the possession of the court, nevertheless operates a vehicle without a license in his possession, is he in violation of Section 904, Act 300, P.A. 1949, as amended,¹⁰ in that there has been a suspension or revocation of the license. Section 904 provides:

"Section 904. (a) Any person whose operator's or chauffeur's license or registration certificate *has been suspended or revoked* or whose application for license has been denied, *as provided in this act*, or who has never applied for a license, and who shall drive any motor vehicle upon the highways of this state or who shall knowingly permit any motor vehicle owned by such person to be operated by another upon any highway, except as permitted under this act, while such license or registration certificate is *suspended or revoked* or whose application for license has been denied *as provided in this act shall be guilty of a misdemeanor*, and upon conviction shall be punished by imprisonment in the county or municipal jail or Detroit house of correction, for a period not less than 3 days nor more than 90 days and there may be imposed in addition thereto a fine of not more than \$100.00. Unless the vehicle was stolen or used with the permission of one who did not knowingly permit an unlicensed driver to operate the vehicle, the registration plates of the vehicle shall be confiscated.

(b) Any person convicted of a second or subsequent violation of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county or municipal jail or in the Detroit house of correction for not less than 5 days nor more than 1 year, and there may be imposed in addition thereto a fine of not more than \$500.00. Unless the vehicle was stolen, the registration plates of the vehicle shall be confiscated.

⁸ Sec. 321, Act 300, P.A. 1949, as amended; M.C.L.A. § 257.321; M.S.A. 1968 Rev. Vol. § 9.2021.

⁹ Sec. 321b, Act 332, P.A. 1968; M.C.L.A. § 257.321b; M.S.A. Cum. Supp. § 9.2021(2).

¹⁰ M.C.L.A. § 257.904; M.S.A. 1968 Rev. Vol. § 9.2604.

(c) The department, upon receiving a record of the conviction of any person upon a charge of unlawful operation of a motor vehicle while the license of such person is suspended, revoked or denied, or of the conviction of any person for a violation of the motor vehicle laws of this state while the license of such person is suspended, revoked, or denied, shall immediately extend the period of such first suspension or revocation for an additional like period, or if no period has been determined, then for at least 30 days but not more than 1 year.

(d) Before the plea of the person shall be accepted under this section, the arresting officer shall check with the department to determine the record and status of the person according to the department files and so inform the court." (emphasis added)

From a reading of that section it becomes clear that the legislature intended that a person violates its provisions if he drives a motor vehicle during the period that his operator's license is suspended, revoked or denied as provided in the Michigan vehicle code. For purposes of Section 904 the suspension, revocation or denial of an operator's license must first be accomplished by the methods and procedures outlined in Act 300, P.A. 1949, as amended, *supra*.

The surrender of a license to the Court, as a condition of probation, is not accomplished by the procedures outlined in the Vehicle Code.

Therefore, it is my opinion that Section 904, prohibiting a person from operating a motor vehicle while his license is suspended, revoked or denied, has no application to operation of a motor vehicle while the operator's license is on deposit with a court as a condition of probation.

However, whenever a probationer does operate a vehicle while his license is in the possession of the Court, he violates Section 311, Act 300, P.A. 1949, as amended,¹¹ which provides as follows:

"Section 311. The licensee shall have such license in his immediate possession at all times when driving a motor vehicle, and shall display the same upon demand of any uniformed police officer or field deputy or inspector or other duly authorized representative of the commissioner who shall identify himself as such."

Your final question asks in effect, Does the Traffic and Ordinance Division of the Recorder's Court for the City of Detroit have power to enforce its orders outside the City of Detroit? In this connection, I assume you specifically inquire whether the Court can enforce its "no driving" probation order, violation of which occurs anywhere in Michigan.

The Recorder's Court of the City of Detroit is a court of record¹² and has the power to apportion between the judges the business of the court.¹³ Within its jurisdiction, the Recorder's Court has the authority to do all acts which the Circuit Courts of this state possess¹⁴ which include orders

¹¹ M.C.L.A. § 257.311; M.S.A. 1968 Rev. Vol. § 9.2011.

¹² Sec. 20, Chapter XII, Act 326, Local Acts of 1883, as amended; M.C.L.A. § 726.20; M.S.A. 1962 Rev. Vol. § 27.3570.

¹³ Sec. 2; M.C.L.A. § 726.2; M.S.A. 1962 Rev. Vol. § 27.3552.

¹⁴ Sec. 11; M.C.L.A. § 726.11; M.S.A. 1962 Rev. Vol. § 27.3561.

of probation,¹⁵ and punishment for contempt.¹⁶ Moreover, all writs and process issued by the Court can be served anywhere in the State of Michigan.¹⁷

Whenever a person is placed on probation and as a condition of that probation he has surrendered his operator's license to the court on condition that he will not drive, then the act of driving violates that condition and will subject the person to revocation of probation.¹⁸ The court can thus order the apprehension of the probationer for purposes of a hearing on the claimed violation.¹⁹

Apprehension would be secured through the process of the Court, which, as above pointed out, may be served anywhere in the State.

It is my opinion then, that the Recorder's Court of the City of Detroit has the power to revoke the probationary status of a person for violation of a condition of probation, violation of which occurs anywhere in Michigan, including the condition of "no driving" when such a probationer operates a vehicle in violation of the Court's order.

Accordingly, your fourth question is answered in the affirmative.

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¹⁵ See, *People v. Sarnoff*, (1942) 302 Mich. 266.

¹⁶ *In re Simmons*, (1929) 248 Mich. 297.

¹⁷ Sec. 21; M.C.L.A. § 726.21; M.S.A. 1962 Rev. Vol. § 27.3571.

¹⁸ Sec. 4; Chapter XI, Act 175, P.A. 1927, as amended; M.C.L.A. § 771.4; M.S.A. 1954 Rev. Vol. § 28.1134.

¹⁹ *Supra*, note 16.