

clause in Section 23 of the Uniform Criminal Extradition Act, 1937 PA 144 as amended; MCLA 780.23; MSA 28.1285(23), which reads as follows:

"In all extradition cases the expenses therefor shall be paid out of the county treasury in the county wherein the crime is alleged to have been committed. The expenses shall be the fees paid to the officers of the state on whose governor the requisition is made, and all other necessary and reasonable expenses in returning such prisoner."

It is my opinion that such statutes permit a county to seek reimbursement from the demanding authority for necessary medical expenses incurred in apprehending and returning a fugitive. However, I am informed that, as a matter of comity, it is the common practice in nearly every state, including Michigan, to make no charge for the costs involved in apprehending and keeping fugitives from other jurisdictions, pending their return to the demanding state.

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MOTOR VEHICLES: License revocation

LICENSES AND PERMITS: Motor vehicles

ADMINISTRATIVE LAW AND PROCEDURE: Standards

A statutory standard authorizing the Secretary of State to cite a driver to appear for driver re-examination when the Secretary of State has reason to believe that the licensed driver is incompetent to drive a motor vehicle is not constitutionally infirm.

Opinion No. 4943

February 26, 1976.

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You have raised the following question concerning a provision of the Michigan Vehicle Code, 1949 PA 300; MCLA 257.1 *et seq*; MSA 9.1801 *et seq*:

"This is to request your opinion as to the constitutionality of M.C.L.A. § 257.320 (a); MSA 9.2020(1) [sic, 9.2020(a)], which in pertinent part reads: 'When the secretary of state has reason to believe that any licensed operator or chauffeur: (1) is incompetent to drive a motor vehicle *or* is afflicted with mental or physical infirmities or disabilities rendering it unsafe for that person to drive a motor vehicle the secretary of state may suspend or revoke the license of that person.'

"Unlike § 257.320(a) (2), (3) and (4), the first clause of subsection (1) provides absolutely no ascertainable standards for suspension and leaves the discretion of the administering officer absolutely unfettered. This lack of standards seems to violate the most elementary principles of due process. Mental or physical infirmities are perhaps capable of objective determination, but 'incompetent to drive' without any objective standards seems to invite arbitrary and capricious action on the part of administering officers. Your opinion, No. 4454, Op. Atty. Gen. 1970¹, does not seem to be addressed to or answer this exact question."

The complete text of 1949 PA 300, § 320(a); MCLA 257.320(a); MSA 9.2020(a), is as follows:

"When the secretary of state has reason to believe that any licensed operator or chauffeur: (1) is incompetent to drive a motor vehicle or is afflicted with mental or physical infirmities or disabilities rendering it unsafe for that person to drive a motor vehicle; (2) as a driver, has in 1 or more instances been involved in an accident resulting in the death of a person; (3) within a 24-month period has been involved in 3 accidents resulting in personal injury or damage to the property of a person in each accident in excess of \$200.00 and the official police report indicates a moving violation on the part of the driver or drivers involved in each of the accidents; or (4) has charged against him a total of 12 or more points as provided in section 320a within a period of 2 years, the secretary of state, after notice as hereinafter provided to the person, may conduct an investigation and require an examination of the person, and *upon good cause*, may suspend or revoke the license and require the immediate surrender of the license of that person. The secretary of state shall, in all cases, prescribe the period of suspension or revocation." [Emphasis added]

The provision lists four situations where the Secretary of State may conduct an investigation and require an examination of a driver if he has reason to believe any of them apply to that driver. Those situations are: (1) Incompetence to drive or mental or physical disability rendering driving unsafe; (2) accident involving a death; (3) three accidents in a 24-month period involving personal injury or property damage in excess of \$200.00 where moving violations were indicated; or (4) 12 or more points in a two-year period.

"Upon good cause" the Secretary of State may suspend or revoke the license of drivers in the above categories designated for re-examination. The foregoing categories are simply the basis for the scheduling of the re-examination. The standard of "good cause" requires that the representatives of the Secretary of State conducting the re-examination utilize suspensions or revocations only when justified by the driver's performance at the re-examination combined with his driving record. Revocations and suspensions are subject to modification and reversal by the License Appeal Board (MCLA 257.322; MSA 9.2022) and to the Circuit Court (MCLA 257.323; MSA 9.2023).

¹ OAG, 1969-1970, No 4454, p 124 (March 30, 1970).

"Incompetent" is defined, *inter alia*, as "inadequate to or unsuitable for a particular purpose expressed or implied. . . ." Webster's Third New International Dictionary (1964), p 1144. This definition permits the Secretary of State to call in for re-examination those drivers whom he has reason to believe are unfit to drive.

Both US Const, Am XIV, § 1, and Const 1963, art 1, § 17, provide that no one may be deprived of life, liberty or property without due process of law. According to *State Highway Commission v VanderKloot*, 392 Mich 159, 169-170; 220 NW2d 416 (1974):

" . . . One of the requirements of substantive due process is the existence of reasonably precise standards to be utilized by administrative agencies in the performance of delegated legislative tasks. *Milford v People's Community Hospital Authority*, 380 Mich 49, 57-63; 155 NW2d 835 (1968)." [pp 169-170]

In *VanderKloot*, *supra*, the issue was whether the bare standard of "necessity" in the highway condemnation act was sufficiently precise. In upholding the standard of "necessity," the opinion stated that the applicable test was whether the standard was "as reasonably precise as the subject matter requires or permits." The test of "reasonably precise standards" was recently applied by the Court of Appeals to uphold the authority of the Secretary of State to suspend for a period of 90 days to 2 years the license of any driver convicted of negligent homicide in the operation of a motor vehicle under 1949 PA 300, § 319 of the Michigan Vehicle Code; MCLA 257.319; MSA 9.2019. In *Cameron v Secretary of State*, 63 Mich App 753; 235 NW2d 38 (1975), the Court said:

"We first address ourselves to plaintiff's claim that § 319 of the Motor Vehicle Code is arbitrary and confiscatory because it deprives plaintiff of his license to drive peremptorily and without benefit of a prior hearing. A similar claim was made and rejected in the recent case of *Gargagliano v Secretary of State*, 62 Mich App 1; 233 NW2d 159 (1975). In that case plaintiff had been determined to be mentally ill and was placed in a state mental institution. Subsequently her driver's license was peremptorily suspended without a hearing by the Secretary of State who acted under the provisions of § 303a of the Motor Vehicle Code, MCLA 257.303a; MSA 9.2003(1), which, similar to § 319 in the case before us, mandates suspension of a license upon receipt of notice. A majority of the Court found no constitutional infraction by reason of summary *ex parte* suspension prescribed by the statute.

" * * * * "

"A grant of discretionary authority, sans standards, to an administrative agency is not invalid per se. In *Argo Oil Corp v Atwood*, 274 Mich 47; 264 NW 285 (1935), the Court sustained a statute giving the Secretary of State discretion, sans standards, to set a bond anywhere from \$1,000 to \$25,000. In *Department of Natural Resources v Seaman*, 53 Mich App 192; 218 NW2d 813 (1974), our Court upheld the constitutionality of a statute, MCLA 308.1b(1); MSA 13.1491(2)(1), giving the Commission of Natural Resources power

to limit the number of fishing licenses when in its opinion 'it is necessary for the better protection, preservation, management, harvesting and utilization of the fisheries * * *.' In *State Highway Commission v VanderKloot*, 392 Mich 159; 220 NW2d 416 (1974), the bare standard 'necessity' in the highway act was held to be sufficiently precise. The test is whether the standard is 'as reasonably precise as the subject matter requires or permits.' (Citation omitted.) *VanderKloot, supra*, 392 Mich 173. Where the purpose of the statute is the protection of the public health or safety, and where the area of discretion makes it impractical to lay down standards, the courts have been less strict in requiring specific standards to guide the licensing agency. Sustaining a statute authorizing the Commissioner of Highways to suspend a license upon a showing that the driver was a 'habitual violator of the traffic laws', the Supreme Court of Minnesota said:

"The rule which requires an expressed standard to guide the exercise of discretion is subject to the exception that where it is impracticable to lay down a definite comprehensive rule—such as, where the administration turns upon questions of qualifications of personal fitness, or where the act relates to the administration of a police regulation which is necessary to protect the general health, welfare, and safety of the public—it is not essential that a specific prescribed standard be expressly stated in the legislation. This is so because it is impossible for the legislature to deal directly with the many details in the varied and complex conditions on which it legislates, but must necessarily leave them to the reasonable discretion of administrative officers.' *Anderson v Commissioner of Highways*, 267 Minn 308, 312; 126 NW2d 778, 781 (1964)."

Therefore, in answer to your question, I do not find any constitutional infirmity in the standard "incompetent to drive a motor vehicle" in MCLA 257.320(a)(1); MSA 9.2020(a)(1), as a basis for citing drivers to appear for driver re-examination.

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COLLEGES AND UNIVERSITIES: Baccalaureate degrees

COLLEGES AND UNIVERSITIES: Community colleges

DETECTIVES: Qualifications for license as a private detective

WORDS AND PHRASES: "Baccalaureate degree"

Where the private detective licensing act requires, as an alternative qualification, that the applicant be a graduate with a degree in the field of police administration from an accredited university or college, an applicant with a two year associate degree from a community college does not satisfy the requirement.