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**CRIMINAL LAW:**  
**MICHIGAN VEHICLE CODE:**  
**SECRETARY OF STATE: Driving without license.**

The non-issuance of an operator's license by the secretary of state pursuant to Section 729 of the Michigan Vehicle Code for the failure of a person to appear before a magistrate does not constitute a denial of said application for purposes of Section 904 of the Michigan Vehicle Code.

A person who operates a motor vehicle while the issuance of his license is held in abeyance by the secretary of state because the applicant has failed to answer a notice to appear in accordance with Section 729 of the Michigan Vehicle Code, is chargeable with operating a vehicle upon a highway without a license in violation of Section 301 of the Michigan Vehicle Code.

No. 4187

February 1, 1965.

Mr. Joseph A. Childs  
Commissioner  
Michigan State Police  
714 South Harrison Road  
East Lansing, Michigan

In your letter you asked my opinion concerning certain sections of the Michigan Vehicle Code.<sup>1</sup> Specifically you asked:

1. Does the non-issuance of a license by the secretary of state provided in Section 729 constitute a "denial?"
2. Is the charge, "operating a motor vehicle while application for license is denied" as provided in Section 904 proper to be placed against a motorist who is apprehended while operating a motor vehicle on the highway during the period the secretary of state is prohibited from issuing him a new license as provided in Section 729?
3. If your answers to the above questions are negative, what is the proper charge to be placed against a motorist operating a motor vehicle under the circumstances set forth in question No. 2?

The following provisions of the Michigan Vehicle Code are applicable:

"Sec. 301. No person, except those hereinafter expressly exempted, shall drive any motor vehicle upon a highway in this state unless such person, upon application, has been licensed as an operator or chauffeur by the department under the provisions of this chapter."<sup>2</sup>

"Sec. 303. The commissioner shall not recommend nor shall the department issue any license hereunder:

\* \* \*

"3. To any person whose license, either as operator or chauffeur, has been suspended during the period for which such license was issued; nor to any person whose license, either as an operator or

<sup>1</sup> Act 300, P.A. 1949, as amended, being C.L.S. 1961 § 257.1 et seq.; M.S.A. 1960 Rev. Vol. § 9.1801 et seq.

<sup>2</sup> C.L.S. 1961 § 257.301; M.S.A. 1960 Rev. Vol. § 9.2001.

chauffeur, has been revoked under the provisions of this act until the expiration of 1 year after such license was revoked.”<sup>3</sup>

“Sec. 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.”<sup>4</sup>

“Sec. 322. “\* \* \* Any person, conceiving himself aggrieved by any final determination of the commissioner denying an application for an operator’s or chauffeur’s license or suspending or revoking the operator’s or chauffeur’s license of such person, may appeal therefrom to the board and the board shall have the power and authority after hearing to affirm, modify, or set aside, any final determination of the commissioner denying an application for an operator’s or chauffeur’s license or suspending or revoking an operator’s or chauffeur’s license; \* \* \*”<sup>5</sup>

“Sec. 729. Upon failure of any person to appear before a magistrate as hereinbefore provided in this chapter, said magistrate may notify the secretary of state upon forms prescribed by him who shall not issue a new license to such person during his default to appear and answer such charge.”<sup>6</sup>

“Sec. 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, 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 2 days nor more than 90 days and there may be imposed in addition thereto a fine of not more than \$100.00.”<sup>7</sup>

It should be pointed out initially that Section 729 provides that upon notification by a magistrate that a person has failed to appear and answer a charge, the secretary of state “shall not issue a new license” to such person. However, the magistrate himself is not required to notify the secretary of state. Section 729 provides that the “magistrate may notify the secretary of state” of a motorist’s failure to appear. This section had formerly required the magistrate to do so.

The time period during which a license shall not be issued is also covered in Section 729. It is until the person has appeared and answered the charge.

<sup>3</sup> C.L.S. 1961 § 257.303; M.S.A. 1963 Cum. Supp. § 9.2003.

<sup>4</sup> C.L.S. 1961 § 257.311; M.S.A. 1960 Rev. Vol. § 9.2011.

<sup>5</sup> C.L.S. 1961 § 257.322; M.S.A. 1960 Rev. Vol. § 9.2022.

<sup>6</sup> C.L.S. 1961 § 257.729; M.S.A. 1960 Rev. Vol. § 9.2429.

<sup>7</sup> C.L.S. 1961 § 257.904; M.S.A. 1960 Rev. Vol. § 9.2604.

Thus, the prohibition in Section 729 against the issuance of a new license ceases to apply upon an appearance and the entry of a plea, even though the applicant's trial may not be held for months.

Under Section 729 the secretary of state does not make any decision except verification of identity. Thus, rather than denying a new license the secretary of state takes no action under Section 729. That is to say, a person who has failed to appear before a magistrate finds his application for license renewal not denied but rather the application is held in abeyance pending his appearance and answer to the charge.

This opinion is in accord with the administrative procedure of the secretary of state. We are advised that upon application for renewal of an operator's license the first step is the preparation of a new license. Following this action a check is made to determine if there is any reason why the license should not be issued. If the secretary of state's records show any report from a magistrate that there are any outstanding notices to appear pending against the applicant, he is advised that a license cannot be issued until these are answered. The application for the license is then held in abeyance pending further action by the applicant.

The answer to your first question is that the non-issuance of a license by the secretary of state as provided in Section 729 does not constitute a "denial."

In view of the answer to your first question, it follows the answer to your second question is also "no." Section 904 applies to persons whose licenses have been suspended or revoked or whose applications have been denied. Since failure of the secretary of state to renew an operator's license immediately because of an unanswered notice to appear under Section 729 does not constitute a "denial" such a person does not violate Section 904 by operating his motor vehicle while his license has not been issued by the secretary of state.

In your third question you ask what charge should be placed against a motorist operating a motor vehicle without license at a time when the secretary of state has not issued a new license to him because of an unanswered notice to appear.

Section 301 provides that a person shall not operate a motor vehicle unless he has a license as defined in Section 25 of the Michigan Vehicle Code. Thus, the proper charge against one who operates a motor vehicle while his application for a license is pending because of an unanswered notice to appear before a magistrate is violation of Section 301.

FRANK J. KELLEY,  
*Attorney General.*