

1874.

REGISTRAR OF MOTOR VEHICLES—IN REHEARING AS TO RIGHT AND PRIVILEGE TO OPERATE MOTOR VEHICLE, MAY ONLY CONSIDER MATTERS RELATING TO AUTHORITY TO REVOKE AND TERMINATE RIGHT TO DRIVE AND PARTY'S FINANCIAL RESPONSIBILITY — NO AUTHORITY TO REVIEW EVIDENCE OR HEAR NEW EVIDENCE AS TO CONVICTION OR JUDGMENT.

SYLLABUS:

1. *In a rehearing under the provisions of Section 6298-14, General Code, the Registrar of Motor Vehicles may only consider matters relating to his authority to revoke and terminate a person's right to drive and the financial responsibility of the party involved.*

2. *In such a proceeding the Registrar of Motor Vehicles has no authority to review the evidence or hear new evidence relating to matters on which the conviction or judgment was based.*

Columbus, Ohio, February 19, 1940.

Hon. Cylon W. Wallace, Registrar of Motor Vehicles,
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your recent request for my opinion, which reads as follows:

“In view of the fact that there is a difference of opinion in regard to the Registrar's duties and power pertaining to the Financial Responsibility Law, I would appreciate an opinion on the following:

It has been my understanding that the Registrar did not have the right to go behind a court's decision, and that if we receive a report from the court of a conviction of one of the offenses enumerated in Section 6298-1 it is mandatory on my part to carry out same.

It has been contended that Section 6298-14, 15, 16, 17, 18, 19 and 20, gives me the authority to hear evidence tending to show that the defendant was not guilty of the offense for which he was convicted.

Would appreciate if you will give us an immediate opinion as to the extent of my authority in regard to the Financial Responsibility law."

By virtue of the above request you are presenting the question as to whether the Registrar of Motor Vehicles, in the proceedings provided for in Sections 6298-14, et seq., General Code, has the authority to review the evidence presented to the court in the original proceeding. In order to properly consider your question the various provisions of law relating to the powers of the Registrar of Motor Vehicles in revoking a person's right and privilege to drive must be considered.

Section 6298-1, General Code, provides:

"The registrar of motor vehicles of the state of Ohio is hereby authorized and empowered to and shall, in accordance with the provision of this act, revoke and terminate the right and privilege of operating a motor vehicle upon the public roads and highways of this state, each license, certificate, or permit to operate a motor vehicle, as chauffeur or otherwise, and each certificate of registration for a motor vehicle of or belonging to any person, who has hereafter either:

(a) Been convicted of or pleaded guilty to any of the following offenses, whether prosecuted under the state law or municipal ordinance, to wit:

1. Manslaughter, resulting from the operation of a motor vehicle;

2. Operating a motor vehicle while under the influence of intoxicating liquor or narcotic drugs;

3. Failing to stop after an accident, when required so to do;

4. A felony in the commission of which a motor vehicle was used; or

(b) Failed within thirty (30) days after the entry of the same, to satisfy or stay the execution of any final judgment hereafter rendered against him in any court of record within this state, in an action for wrongful death, personal injury or damage to property, caused by such person's individual operation of a motor vehicle."

Section 6298-3, General Code, provides:

"The trial court, which passes sentence or imposes a fine upon a person for any of the offenses set forth in Section 1 (a) of this act, or renders a final judgment which remains unsatisfied and not stayed as set forth in Section 1 (b) of this act, shall forward im-

mediately to the registrar of motor vehicles a certified copy or transcript of such conviction or judgment together with such other information as the registrar may prescribe.”

Section 6298-4, General Code, provides:

“The registrar of motor vehicles may, at any time, and shall, upon receipt of such information from a trial court, issue, and serve, by registered mail addressed to such person’s last known address, a notice, requiring any person who has been convicted or failed to satisfy or stay the execution of a judgment, as set forth in this act, to show cause why his right and privilege of operating a motor vehicle upon the public roads and highways of this state, his license, certificate, or permit to operate a motor vehicle, and the certificate, or certificates, of registration of his motor vehicle, or motor vehicles should not be revoked and terminated. Unless prior to the expiration of thirty (30) days from the date of such notice such person shows to the satisfaction of the registrar that there is no authority herein to make such an order, or unless, within said period of time, such persons shall have satisfied the registrar of his ability to respond in damages, as hereinafter set forth, the registrar shall issue an order revoking and terminating such person’s right and privilege of operating a motor vehicle upon the public roads and highways of this state, his license, certificate, or permit to operate a motor vehicle, and all certificates of registration issued for his motor vehicles. Such order shall, unless vacated, modified, or reversed, as provided in this act, remain in full force and effect for a period of one year from the date thereof, and while such order is in force, no license, certificate, or permit to operate a motor vehicle, either as chauffer or otherwise, nor any certificate of registration for a motor vehicle, shall be issued to such person.”

Summarizing the above sections, it is made the duty of the Registrar of Motor Vehicles to revoke and terminate the right to drive of any person who has been convicted of or pleaded guilty to certain specified offenses or who fails, within thirty days, to satisfy or stay the execution of a judgment arising from that person’s operation of a motor vehicle. In order that the Registrar may have proper notice of such conviction or judgment, it is the duty of the trial court to immediately forward to the Registrar a certified copy of such conviction or judgment.

Section 6298-4, supra, then directs the Registrar to give a thirty day notice to the party involved of the contemplated order of revocation. Unless prior to the expiration of the thirty day period, such person shows that the Registrar has no authority to make such an order or unless such person shows his financial responsibility as provided in Sections 6298-5, et seq., General

Code, the Registrar shall issue an order revoking such person's right to drive.

It appears, therefore, that when the notice has been received from the trial court, only two questions, if properly presented, may be considered by the Registrar, viz., his authority to make the order of revocation and the financial responsibility of the party involved. Obviously, the weight of the evidence in the trial of the cause is, in no way, involved in the two matters to be determined by the Registrar under Section 6298-4, supra.

Section 6298-14, General Code, provides:

"Within ten days after any order other than a final order, has been issued by the registrar of motor vehicles, any person affected by such order may apply to the registrar to vacate or modify such order and for a rehearing with respect to any matter determined in said proceedings and specified in the application for rehearing, and the registrar shall hold such rehearing on such matters if ground therefor appears on the face of the application. Such application shall set forth specifically the ground upon which the applicant considers such order to be unlawful, and no party shall in any court urge or rely on any ground not set forth in said application. Any application for vacation, or modification, and rehearing shall suspend the registrar's order until such application is finally disposed of by the registrar of motor vehicles. Any application for rehearing shall be promptly and expeditiously disposed of by the registrar. An order denying such application shall be a final order of the registrar."

The power given to the Registrar to consider upon rehearing *any matter determined in said proceedings* clearly refers to the determination, by the Registrar, of his authority to issue such an order and to the financial responsibility of the party concerned. Only the foregoing matters are involved when it is provided in Section 6298-14, supra, that the application shall specify the ground upon which it is claimed such order of revocation is *unlawful*. Here again, the matter of the evidence introduced at the trial of the cause obviously can not be considered.

The same idea is expressed in Section 6298-17, General Code, which provides:

"A final order made by the registrar may be reversed, vacated, or modified by the court of common pleas of Franklin County, or of the county in which the party affected by the order resides, if upon consideration of the record before it, such court is of the opinion that the final order of the registrar of motor vehicles was *unlawful*." (Emphasis mine.)

The Legislature did not intend, nor does the language of the statutes purport, to grant to the Registrar authority to review the evidence introduced in the trial of the case. Even though the verdict or judgment of the trial court might be against the weight of the evidence in a particular case, an order made by the Registrar of Motor Vehicles based on such verdict or judgment obviously could not be said to be "unlawful."

Resort may be had to the higher courts to reverse the conviction or judgment rendered in the trial court, but it was never intended that the Registrar of Motor Vehicles should act as a court to hear and determine a collateral attack on the verdict or judgment rendered in the trial court.

In view of the above and in specific answer to your inquiry, I am of the opinion that: (1) In a rehearing under the provisions of Section 6298-14, General Code, the Registrar of Motor Vehicles may only consider matters relating to his authority to revoke and terminate a person's right to drive and the financial responsibility of the party involved; (2) In such a proceeding the Registrar of Motor Vehicles has no authority to review the evidence or hear new evidence relating to matters on which the conviction or judgment was based.

Respectfully,

THOMAS J. HERBERT,
Attorney General.