

there is no authority for holding such person in jail without charges being preferred against him.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

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4838.

FINANCIAL RESPONSIBILITY LAW—LAW NOT APPLICABLE  
TO OFFENSES COMMITTED PRIOR TO EFFECTIVE  
DATE THEREOF.

SYLLABUS:

1. *The Registrar of Motor Vehicles has no authority to exercise any power of revocation under Section 6298-1, General Code, based upon any offenses which have occurred prior to the effective date thereof, even though the conviction for such offense and certification to the Registrar of Motor Vehicles occurs subsequent to such effective date.*

2. *There may be no such revocation predicated upon the failure to satisfy a judgment resulting from an accident or collision occurring prior to such effective date, even though such judgment and certificate thereof to the Registrar of Motor Vehicles occurs subsequent thereto.*

COLUMBUS, OHIO, October 26, 1935.

HON. FRANK WEST, *Registrar, Bureau of Motor Vehicles, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

“I kindly request your opinion relative to the Financial Responsibility Law known as Amended Senate Bill No. 67 in the following particular:

Sections 1 thereof or sections 6298-1 of the General Code is as follows:

Section 1. The registrar of motor vehicles of the State of Ohio is hereby authorized and empowered to and shall, in accordance with the provisions 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, 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 by law;
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. (my own italics)

If a conviction or plea of guilty is had subsequent to the taking of effect of this law for an offense occurring prior thereto, and the Court reports the plea or conviction to the registrar, would an order of revocation by the registrar as prescribed in the law be valid or lawful? Also please cover the same point with respect to revocations by the registrar on reports of unsatisfied judgments, which are entered subsequent to the taking of effect of said law and resulting from an act or collision prior thereto.

Your opinion of the retro-active nature, if any, of the law in the above instances is what I have particularly in mind."

The constitution of the United States prohibits the enactment of *ex post facto* laws, either by the States or Congress, in Article 1, Sections 9 and 10 of the constitution.

The Constitution of Ohio, Article 2, Section 28, contains the following provisions relating to retroactive laws:

"The General Assembly shall have no power to pass retroactive laws \* \* \*."

The definition of Judge Story that "upon principle, every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already passed, must be deemed retrospective", has met with judicial favor in Ohio. *Rairden vs. Holden*, 15 O. S. 207;

*Miller vs. Hixson*, 64 O. S. 39; *Safford vs. Metropolitan Life Insurance Company*, 119 O. S. 332.

*Ex post facto* laws are the criminal phase of retroactive legislation. An *ex post facto* law is defined as one which would render an act punishable in a manner in which it was not punishable when it was committed. *Treasurer vs. Walker*, 10 O. Dec. Rep. 558, 22 Bull, 106, Bouvier's Law Dictionary.

The drivers financial responsibility law of California, a part of the California Motor Vehicle Act, is similar in scope and purpose to the newly enacted Ohio Drivers Financial Responsibility Law, General Code, Sections 6298-1 to 6298-25, both inclusive. The case of *Watson vs. Division of Motor Vehicles*, 212, Cal. 279, 298, Pac. 481, arising under the California Act, held, as disclosed by the 8th branch of the syllabus:

"8. The penalty imposed - - - suspension of license - - - by the California Vehicle Act (Stats. 1929, p. 561) is imposed because of negligent driving and since the Act adds a new penalty for such negligence, it can have no application to acts of negligence committed before its passage, although a judgment for such negligence may have been obtained after the effective date of such statute."

This decision involved an interpretation of the California Statutes 1929, p. 561, section 73 (G.) which provided in part:

"The operator's or chauffeur's license and all of the registration certificates of any person, in the event of his failure to satisfy full judgment within 15 days from the time it shall become final, rendered against him by a court of competent jurisdiction in this or any other state, or in a district court of the United States, for damages on account of personal injury, or damages to property in excess of one hundred dollars resulting from the ownership or operation of a motor vehicle by him, his agent, or any other person, with the express or implied consent of the owner, shall be forthwith suspended by the Chief of the Division of Motor Vehicles, upon receiving a certified copy of such final judgment or judgments from the court in which the same are rendered \* \* \*".

The reasoning of the Court in support of the holding, *supra*, is stated at page 287 as follows:

"In other words, it is contended on behalf of the respondent that as long as the judgment is entered after the effective date of the statute, the Act applies, regardless of the date of the accident, and it is contended such application of the statute is prospective and not

retrospective. In this we cannot agree. It has already been held that the Act is constitutional for the reason that it is a reasonable exercise of the police power in that it tends to keep negligent drivers off the highway. The penalty imposed - - - suspension of license - - - is imposed because of negligent driving. If the penalty were imposed simply for failure to pay a judgment, and had no relation to negligent operation of motor vehicles, it would be unconstitutional. It follows that since the Act adds a new penalty for that negligence, under well settled principles the Act can have no application to acts of negligence committed before its passage. Any other interpretation would violate the well settled rule in reference to the prospective operation of such statutes."

Moreover, if the Act is construed to add an additional penalty for a criminal offense committed prior to the effective date of the Act, there would be considerable doubt as to its constitutionality. It is a well recognized rule that statutes will be construed to operate only prospectively, unless an intent to the contrary clearly appears. A statute will never be given a retrospective operation when to do so would render it unconstitutional if its words admit of any other construction. It is always presumed that statutes were intended to operate prospectively and all doubts are resolved in favor of such a construction. *Sutherland Statutory Construction*, 2nd Ed., Vol. 2, pages 1157 to 1162. See also cases collated in notes, 37 *O. Jurisprudence*, pages 819, 820, 821 and 822.

In view of the above principles and in specific answer to your questions, it is my opinion that:

1. The Registrar of Motor Vehicles has no authority to exercise any power of revocation under Section 6298-1, General Code, based upon any offenses which have occurred prior to the effective date thereof, even though the conviction for such offense and certification to the Registrar of Motor Vehicles occurs subsequent to such effective date.
2. There may be no such revocation predicated upon the failure to satisfy a judgment resulting from an accident or collision occurring prior to such effective date, even though such judgment and certificate thereof to the Registrar of Motor Vehicles occurs subsequent thereto.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*