

OPINION NO. 77-008

Syllabus:

1. In hearings in municipal courts on suspensions under R.C. 4511.191 the Registrar of the Bureau of Motor Vehicles shall, subject to the specific provisions in R.C. 1901.34 with respect to hearings in Portage, Auglaize and Hamilton counties, be represented by the solicitor, attorney, or law director of the municipal corporation in which the arrest, that resulted in the suspension, occurred. When the arrest has occurred in unincorporated territory, the Registrar shall be represented by the solicitor, attorney or law director of the city, in which the municipal court is located.

2. R.C. 1901.34 is by its nature inapplicable to hearings in municipal courts on suspensions under R.C. 4507.40. In such cases the Registrar should be represented by the solicitor, attorney or law director of the municipal corporation in which the petitioner resides. When the residence of the petitioner is unincorporated territory, the solicitor, attorney or law director of the city, in which the municipal court is located, is the appropriate representative of the Registrar.

To: Dean L. Dollison, Registrar, Bureau of Motor Vehicles, Columbus, Ohio
By: William J. Brown, Attorney General, March 3, 1977

You have requested an opinion from this office as to who is the appropriate legal representative of the Registrar in hearings in a municipal court pursuant to R.C. 4507.40, subsections (K) and (N), and R.C. 4511.191, subsections (F) and (G), as amended by Am. H.B. No. 451, eff. 1-3-77.

R.C. 4507.40, to which you refer, sets up a point system, under which points are charged to drivers, in accordance with an established schedule, for various traffic violations. Under R.C. 4507.40(K) persons charged with twelve or more points within a two-year period are subject to the suspension of their driver's licenses for six months. Similarly R.C. 4511.191 provides for a six month suspension of the driver's license of any person arrested for operating a motor vehicle while under the influence of alcohol, who has refused to submit to a chemical test.

Both sections provide that a person whose license has been suspended may file a petition appealing such suspension. In this regard R.C. 4507.40 reads in pertinent part as follows:

"(K) When, upon determination of the registrar, any person has charged against him a total of not less than twelve points within a period of two years from the date of the first conviction within said two-year period, the registrar shall notify such person by registered mail to the licensee's last known address, that his driver's license shall be suspended for six months effective on the twentieth day after mailing the notice unless the licensee files a petition in the municipal court or the county court, or in case such person is under the age of eighteen years to the juvenile court, in whose jurisdiction such person resides, agreeing to pay the cost of the proceedings and alleging that the licensee can show cause why his driving privileges should not be suspended for a period of six months.

. . . .

"(N) . . .

"In hearing the matter and determining whether such person has shown cause why his driving privileges should not be suspended, the court shall decide such issue upon the record certified by the registrar and such additional relevant, competent, and material evidence as either the registrar or the person whose license is sought to be suspended submits.

"In such proceedings the registrar shall be represented by the prosecuting attorney of the county in which the person resides if the petition is filed in the county court, except where the petitioner is a resident of a city or village within the jurisdiction of a county court in which case the city or village solicitor shall represent the registrar. If the petition is filed in the municipal court, the registrar shall be represented as provided in section 1901.34 of the Revised Code."

(Emphasis added.)

. . . .

R.C. 4511.191 employs virtually identical language in providing for legal representation of the Registrar in hearings on petitions filed under that section. As to where the petition must be filed, R.C. 4511.191(F) reads:

"(F) Any person whose license or permit to drive or non-resident operating privilege has been suspended under this section, may, within twenty days of the mailing of the notice provided above, file a petition in the municipal court or the county court, or in case such person is a minor in the juvenile court, in whose jurisdiction such person resides or in whose jurisdiction the arrest occurred if such person is not a resident of this state, agreeing to pay the cost of the proceedings and alleging error in the action taken by the registrar of motor vehicles under division (D) of this section or in one or more of the matters within the scope of the hearing as provided in this section, or both. Such petitioner shall notify the registrar of the filing of the petition and send him a copy. The scope of such hearing shall be limited to the issues of whether a police officer had reasonable ground to believe the person had been driving a motor vehicle upon the public highways in this state while under the influence of alcohol, whether the person was placed under arrest, whether he refused to submit to the test upon request of the officer, and whether he was advised of the consequences of his refusal." (Emphasis added.)

This section is similar to R.C. 4507.40 in basing jurisdiction on the residence of the petitioner, except that non-residents of the state may file petitions under R.C. 4511.191 in the court in whose jurisdiction the arrest took place. With respect to legal representation, both sections use residence of the petitioner as the primary factor in determining who shall represent the Registrar at the hearing. Where the petition is filed in the municipal court, however, the General Assembly has provided that representation of the Registrar shall be as provided in R.C. 1901.34. That section reads:

"The city solicitor, city attorney, or director of law for each municipal corporation within the territory shall prosecute all criminal cases brought before the municipal court for violations of the ordinances of the municipal corporation for which he is solicitor, attorney, or director of law, or for violation of state statutes or other criminal offenses occurring within the municipal corporation for which he is a solicitor, attorney, or director of law. The city solicitor, city attorney, or director of law of the city in which the court is located shall prosecute all criminal cases brought before the court arising in the unincorporated areas within the territory, except that in the Portage county and Auglaize county municipal courts, the prosecuting attorney of the county shall prosecute all violations of state law arising within the territories,

and for assuming these additional duties, the prosecuting attorney of Portage county shall receive compensation at the rate of four thousand eight hundred dollars per year, and the prosecuting attorney of Auglaize county shall receive compensation at the rate of one thousand eight hundred dollars per year, each payable from the county treasury of the respective counties in semimonthly installments, and except that in the Hamilton county municipal court, the city solicitor of the city of Cincinnati may prosecute all criminal cases brought before the Hamilton county municipal court within its jurisdiction. The city solicitor, city attorney, or director of law shall perform the same duties, as far as they are applicable thereto, as are required of the prosecuting attorney of the county. He or his assistants whom he may appoint shall receive for such services additional compensation to be paid from the treasury of the county as the board of county commissioners prescribes."

It is not clear what the General Assembly has intended by its reference to R.C. 1901.34. That section states who shall prosecute criminal actions arising in a municipal court. While it may be reasoned that the General Assembly intended that the solicitor, city attorney, or law director who would prosecute criminal actions under this section, should also represent the Registrar in hearings arising under R.C. 4507.40 and R.C. 4511.191, the criteria for assignment of cases to different legal officers, are not by their nature adaptable to the hearings under at least one of these sections.

It may be first noted that the general scheme of R.C. 1901.34 is to base duty to prosecute on the nature of the violation (municipal ordinance or state statute) and on the place where the violation occurred. Because of basic differences in the nature of suspensions under R.C. 4507.40 and R.C. 4511.191, it is appropriate to consider them separately in construing the effect of R.C. 1901.34 thereon.

R.C. 4511.191

With respect to R.C. 4511.191, the suspension provided therein may ultimately be related to a specific arrest, though that arrest may involve the violation of both a state statute and a municipal ordinance. See R.C. 4511.19. Under the test set out in R.C. 1901.34 the solicitor, attorney, or law director of the municipal corporation in which the violation(s) occurred, would be charged with the duty of representing the Registrar at the hearing. When the arrest occurs in unincorporated territories representation would be by the solicitor, attorney, or law director of the city in which the court is located. In addition R.C. 1901.34 makes special provision for representation by the prosecuting attorneys in cases arising in the Portage County and Auglaize County municipal courts and for representation by the city solicitor of Cincinnati in all cases arising in the Hamilton county municipal court. These provisions would likewise be applicable in assigning cases under R.C. 4511.191.

R.C. 4507.40

Under R.C. 4507.40 the suspension of an individual's drivers license is not the result of any one violation, but rather the determination by the Registrar pursuant to R.C. 4507.40(K) that a person has accrued twelve or more points during a two-year period. Therefore, a test based on the place of the violation would be unfeasible. Similarly, because the suspension does not relate to a single violation it is not possible to say in each case of a suspension that it was based on the violation of either a municipal ordinance or a state statute. It follows that the criteria used in R.C. 1901.34 can not be applied, notwithstanding the General Assembly's reference.

Where the intent and effect of legislation is unclear two sections R.C. 1.47 and R.C. 1.49 set forth well settled rules of statutory construction:

R.C. 1.47

"In enacting a statute, it is presumed that:

- (A) Compliance with the constitutions of the state and of the United States is intended;
- (B) The entire statute is intended to be effective;
- (C) A just and reasonable result is intended;
- (D) A result feasible of execution is intended."

R.C. 1.49

"If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters:

- (A) The object sought to be attained;
- (B) The circumstances under which the statute was enacted;
- (C) The legislative history;
- (D) The common law or former statutory provisions, including laws upon the same or similar subjects;
- (E) The consequences of a particular construction;
- (F) The administrative construction of the statute."

The object of Am. H.B. No. 451, supra, as set out at the beginning of the Act, was to change the provisions of R.C. 4507.40 and R.C. 4511.191 for the representation of the Registrar at suspension hearings. As such R.C. 4507.40 should be construed if possible so as to relieve the current legal representative, the prosecuting attorney, of that duty when petitions are filed in municipal court and to shift that responsibility to the solicitor, attorney or law director of the municipal corporation having an interest in the hearing. As discussed above, however, a literal construction of the pertinent sections leads to a result, which is not "feasible of execution."

It is appropriate then to go beyond the newly enacted

language of R.C. 4507.40 and to consider the entire statute. As noted above, jurisdiction for hearings on suspensions under R.C. 4507.40 is based on the residence of petitioners. In addition, when the petition is filed in a county court, representation of the Registrar is also determined by the residence of the petitioner. It follows that the General Assembly has considered residence as a relevant factor in determinations as to jurisdiction or representation. Such a test is in fact consistent with the nature of a suspension under this section, since the place of a petitioner's residence will likely be most directly affected by his loss or retention of his driver's license.

In view of the fact that the criteria in R.C. 1901.34 are not by their nature adaptable to the assignment of legal counsel for the Registrar in suspension hearings under R.C. 4507.40, I am of the opinion that the intention of the General Assembly, as expressed in Am. H.B. No. 451, supra, and the rest of the statute, is best served by basing representation of the Registrar on the residence of the petitioner. In case of a petition filed in municipal court by an individual, who is a resident of unincorporated territory within the jurisdiction of the court, the solicitor, attorney, or law director of the city, in which the court is located, would be the appropriate legal representative of the Registrar at the hearing.

In specific answer to your question it is, therefore, my opinion and you are so advised that:

1. In hearings in municipal courts on suspensions under R.C. 4511.191 the Registrar of the Bureau of Motor Vehicles shall, subject to the specific provisions in R.C. 1901.34 with respect to hearings in Portage, Auglaize and Hamilton counties, be represented by the solicitor, attorney, or law director of the municipal corporation in which the arrest, that resulted in the suspension, occurred. When the arrest has occurred in unincorporated territory, the Registrar shall be represented by the solicitor, attorney or law director of the city, in which the municipal court is located.

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