

## OPINION NO. 69-125

## Syllabus:

The Bureau of Motor Vehicles does not have the power to suspend the license of a driver who has refused to submit to a chemical test pursuant to the provisions of Section 4511.191, Revised Code, when such driver, within ten days, appears in the forum where charged and pleads guilty as his first advised plea to the offense for which he was arrested.

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To: Daniel T. Spitler, Wood County Pros. Atty., Bowling Green, Ohio  
By: Paul W. Brown, Attorney General, September 24, 1969

I am in receipt of your opinion request concerning the validity of Section 4511.191 (D), Revised Code, as it pertains to individuals who have refused to submit to a chemical test to determine the percentage of alcohol in the blood but have nonetheless entered a plea of guilty to the offense of driving while under the influence of alcohol.

Section 4511.191 (D), Revised Code, provides as follows:

"(D) If a person under arrest for the offense of driving a motor vehicle while under the influence of alcohol refuses upon the request of a police officer to submit to a chemical test designated by the law enforcement agency as provided in division (A) of this section, after first having been advised of the consequences of his refusal as provided in division (B) of this section, no chemical test shall be given, but the registrar of motor vehicles upon the receipt of a sworn report of the police officer that he had reasonable grounds to believe the arrested person had been driving a motor vehicle upon the public highways of this state while under the influence of alcohol and that the person refused to submit to the test upon the request of the police officer and upon the receipt of the form as provided in division (C) of this section certifying that the arrested person was advised of the consequences of his refusal, shall suspend his

license or permit to drive, or any nonresident operating privilege for a period of six months, subject to review as provided in this section; or if the person is a resident without a license or permit to operate a motor vehicle in this state, the registrar shall deny to the person the issuance of a license or permit for a period of six months after the date of the alleged violation."

In the case of In Re Williamson, 18 Ohio Misc. 67 (1969), the Common Pleas Court of Paulding County reversed the action of the Bureau of Motor Vehicles in suspending a driver's license for refusing to submit to a chemical test and restored the license. The Court's holding in the Williamson case, *supra*, was limited to the facts of the case, as stated by the Court at 18 Ohio Misc. 77:

"Consequently, I hold that in a case where (1) a police officer arrests a licensed driver on a charge of driving while under the influence of alcohol, (2) such driver is asked to take a chemical test to determine the percentage of alcohol in his body after full explanation of the consequences of his refusal but nevertheless refuses to take the test, (3) such driver is then prosecuted for the offense for which he was arrested, (4) appears in court at his first arraignment with counsel and within ten days of his arrest, (5) enters a plea of 'guilty' to the offense for which he was arrested, and (6) notice of such a plea of guilty reaches the Bureau of Motor Vehicles with 15 days of his arrest \* \* \*."

Based on the foregoing narrow facts, the Court stated its conclusion, as follows, at 18 Ohio Misc. 76:

"Now when, as here, the first advised plea of the accused is 'guilty' and is made within ten days of his arrest and refusal to take the test, it seems to me that he has obviated every legitimate purpose the 'implied consent' statute can have."

I concur with the reasoning and holding of the Common Pleas Court in the Williamson case, *supra*. It is difficult to imagine any legitimate legislative intent or purpose which would be served or could have been intended by the General Assembly by the administrative suspension of a driver's license pursuant to Section 4511.191, Revised Code, when a driver refuses to submit to the chemical test, but promptly thereafter appears in the forum where charged and pleads guilty to the offense for which he was arrested. Two well-known and accepted maxims of statutory construction are that the manifest intent of the General Assembly is to be determined in the event a statutory enactment requires interpretation and that such statutory enactment will be interpreted so as to avoid "absurd results." Humphrys v. The Winous Co., et al., 165 Ohio St. 45 (1956); The State of Ohio v. Nickles, 159 Ohio St. 353 (1953). It is equally clear that "manifest reason and intention of the law should prevail, although at variance with the literal import of the language employed." Slater v. Cave, 3 Ohio St. 80 (1853), Syllabus. Finally, if a statute is capable of two interpretations, one of which is constitutional and the other unconstitutional, the constitutional interpretation must prevail. The State, ex rel. Mack v. Guckenberger, 139 Ohio St. 273 (1942). To determine that the Bureau of Motor Vehicles has the administrative

power to revoke a driver's license under the factual situation described in the Williamson case, supra, might well raise grave constitutional questions. For example, assume a factual situation where two persons are arrested for driving while under the influence of alcohol. One of such persons submits to the chemical test and the other refuses to take the chemical test. Both persons subsequently appear in the forum where charged on the same day and plead guilty to the offense charged. The only function to be served by suspension under Section 4511.191 (D), supra, with respect to the person refusing to take the test is an administrative "punishment" for his failure to take the test.

Based on the foregoing, therefore, it is my opinion and you are so advised that the Bureau of Motor Vehicles does not have the power to suspend the license of a driver who has refused to submit to a chemical test pursuant to the provisions of Section 4511.191, Revised Code, when such driver, within ten days, appears in the forum where charged and pleads guilty as his first advised plea to the offense for which he was arrested.