

OPINION NO. 867**Syllabus:**

Conviction of or plea of guilty to violations of Sections 4511.12, 4511.13, 4511.15, 4511.18 to 4511.23, inclusive, 4511.25 to 4511.48 inclusive, 4511.57 to 4511.65, inclusive or 4511.75 of the Revised Code, accumulated prior to September 27, 1963, may be added to those convictions or pleas of guilty acquired on or after September 27, 1963 in determining the revocation of a probationary chauffeur's license, probationary operator's license or restricted license under Section 4507.162, Revised Code.

To: Dave Mainwaring, Registrar of Bureau of Motor Vehicles, Columbus, Ohio

By: William B. Saxbe, Attorney General, February 12, 1964

I have before me your request for my opinion reading as follows:

"Prior to the enactment of Amended Substitute House Bill No. 772, which became effective September 27, 1963, Section 4507.162 provided that the registrar should revoke the junior probationary license or restricted license issued to any person when such person has, before reaching his eighteenth birthday, been convicted of, pleaded guilty to, or been adjudged in juvenile court of having committed three separate violations under certain sections of the motor vehicle code.

"Amended Section 4507.162 now provides: The registrar of motor vehicles shall revoke the probationary chauffeur's license, probationary operator's license, or restricted license issued to any person when such person has, before reaching his twenty-first birthday, been convicted of, or pleaded guilty to, in any court of competent jurisdiction, or been adjudged in juvenile court of having committed three separate violations in any two-year period under the same sections of the motor vehicle code.

"The fact that new law changes provide for Probationary License rather than a Junior Probationary License, and the maximum age limit having been raised from 18 to 21 years of age, the question now arises:

"Can the convictions accumulated prior to the effective date of the new law be added to

those convictions acquired after the effective date in determining the revocation of a license?"

Section 4507.162, Revised Code, effective September 27, 1963, to which you refer, reads as follows:

"The registrar of motor vehicles shall revoke the probationary chauffeur's license, probationary operator's license, or restricted license issued to any person when such person has, before reaching his twenty-first birthday, been convicted of or pleaded guilty to in any court of competent jurisdiction, or been adjudged in juvenile court of, having committed three separate violations in any two-year period under sections 4511.12, 4511.13, 4511.15, 4511.18 to 4511.23, inclusive, 4511.25 to 4511.48, inclusive, 4511.57 to 4511.65, inclusive, or 4511.75 of the Revised Code, or of any municipal ordinance similarly relating to the offenses covered in the above enumerated sections. Any such revocation shall remain in effect until one year has elapsed since the date of revocation of such probationary operator's license, probationary chauffeur's license, or restricted license.

" * * * * * "

Section 4507.01, Revised Code, as it was in effect prior to September 27, 1963, read in part as follows:

"'Junior probationary license' means the license issued to any person between sixteen and eighteen years of age to operate a motor vehicle."

Section 4507.01, Revised Code, effective September 27, 1963, reads in part:

" * * * * * "

"'Probationary license' means the license issued to any person between sixteen and twenty-one years of age to operate a motor vehicle.

" * * * * * "

"'Probationary chauffeur's license' means the chauffeur's license issued to any person between eighteen and twenty-one years of age.

" * * * * * "

In the case of Barbieri v. Morris, 315 S.W. 2d, 711, (Mo. 1958) the Court held in paragraphs one and four of the syllabus:

"1. Issuance by state of license to operate motor vehicle on public streets and highways does not create any contractual or vested right in the one to whom it is issued for its continued possession.

"4. Statute is not retrospective merely because it relates to prior facts and transactions but does not change their legal effect because some of the requisites for its action are drawn from the time antecedent to passage or because it fixes status of a person for purpose of its operation, but is retroactive only when it is applied to rights acquired prior to its enactment."

The Barbieri case, supra, was a proceeding on an appeal from an order of the director of revenue suspending a license to operate an automobile on the ground that the licensee had been found to be an habitual violator of traffic laws under a statute defining such habitual violator as a person who has been adjudged guilty of four moving traffic violations within two years. The Court said at page 714:

"The legislative definition of a 'habitual violator of traffic laws' is declared to be a person who has been (not who shall be) adjudged guilty at least four times within two years of violating certain traffic laws or ordinances. There is no qualifying phrase to the effect that the two years shall be 'after the effective date' of Section 302.010 (8). From the language used, it is clear that the legislature intended to define a 'habitual violator of traffic laws as one who has been four times convicted of certain traffic laws within a two-year period without regard to whether one or more of the convictions occurred before August 29, 1955. We think this is also consistent with the purpose of the statute.

* * * * *

"'Retroactive' or 'retrospective' laws are generally defined, from a legal viewpoint, as those which take away or impair vested rights acquired under existing laws, or create a new obligation, impose a new duty, or attach a new disability in respect to transactions or considerations already past. Lucas v. Murphy, 348 Mo. 1078, 156 S.W. 2d, 686, 690. But it has been held specifically that 'a statute is not retrospective because it merely relates to prior facts or transactions but does not change their legal effect, or because some of the requisites for its action are drawn from a time antecedent to

its passage, or because it fixed the status of a person for the purpose of its operation. State ex rel. Sweezer v. Green, 360 Mo. 1249, 232 S.W. 2d, 897, 900, 24 A.L.R. 2d, 340. It is said to be retroactive 'only when it is applied to rights acquired prior to its enactment.' 82 C.J.S. Statutes, Section 412. See also State ex rel. Ross to Use of Drainage Dist. No. 8 of Pemiscot County v. General American Life Ins. Co., 336 Mo. 829, 85 S.W. 2d, 68; 74; Dye v. School District No. 32 of Pulaski County, 355 Mo. 231, 195 S.W. 2d, 874, 879; 16 A.C.J.S. Constitutional Law Section 414. Paul admits in his brief that the right to drive an automobile is not a vested right and as stated in State ex rel. Sweezer v. Green, *supra*, 'We have many times held that a statute is not retrospective in its operation within the constitutional prohibition, unless it impairs a vested right.'

In the case of Sturgill v. Beard, 303 S.W. 2d, 908, (Ky. 1957), the court held in headnotes 2 and 6 as follows:

"2. A citizen is not born with a natural and irrevocable right to operate a motor vehicle on the public roads, but such rights is a privilege granted by license of the state subject to reasonable regulations by the state in the exercise of its police power.

"6. Fact that certain moving violations were not ground for suspension of operator's motor vehicle license when he was convicted of offenses in 1954, 1955 and 1956 did not preclude the Department of Public Safety from considering such prior convictions in ordering the suspension of his license under the 'point system' on the ground that to do so, constituted a retroactive application of the regulations and ex post facto law."

Ohio has similarly held in interpreting the Habitual Criminal Statutes and statutes providing for more severe penalties for subsequent convictions that these laws are not ex post facto or retroactive.

In the case of In re Allen, 91 Ohio St., 315, the court held that the application of the provision of a statute making it a greater offense to be convicted twice for the same crime to a person whose first offense was committed prior to the enactment of the statutory provision, did not make the statute ex post facto or retroactive.

From the language used in Section 4507.162, Revised Code, it appears clear that the legislature intended to revoke probationary or restricted licenses upon commission of three separate violations within any two-year period without regard to whether one or more of the commissions occurred prior to September 27, 1963. This being so, and based on the foregoing authority, I see no reason why such section may not be applied so as to take into account violations occurring within

a two-year period but prior to the effective date of the statute.

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

Conviction of or plea of guilty to violations of Sections 4511.12, 4511.13, 4511.15, 4511.18 to 4511.23, inclusive, 4511.25 to 4511.48, inclusive, 4511.57 to 4511.65, inclusive or 4511.75 of the Revised Code, accumulated prior to September 27, 1963, may be added to those convictions or pleas of guilty acquired on or after September 27, 1963 in determining the revocation of a probationary chauffeur's license, probationary operator's license or restricted license under Section 4507.162, Revised Code.