

OPINION NO. 79-092

Syllabus:

The probationary operator's license of a person who commits a third moving traffic violation before his eighteenth birthday, but who neither is convicted of, nor pleads guilty to, the violation until after his eighteenth birthday, may not be suspended under R.C. 4507.162.

To: L. Craig Hallows, Miami County Prosecuting Attorney, Troy, Ohio
By: William J. Brown, Attorney General, December 11, 1979

I have before me your request for my opinion which raises the following question:

May the probationary operator's license of a person be suspended under R.C. 4507.162 if the person is convicted of, or pleads guilty to, two moving traffic violations and commits a third violation, all before his eighteenth birthday, but neither is convicted of, nor pleads guilty to, the third violation until after his eighteenth birthday?

R.C. 4507.162 provides in pertinent part:

The registrar of motor vehicles shall revoke the probationary operator's license or restricted license issued to any person when such person has, before reaching his eighteenth 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 [specified sections of O.R.C.]. (Emphasis added.)

Had the General Assembly considered the precise question presented, it is not unlikely that it would have provided for revocation of the license in the situation you describe. In short, they may well have made the date of violation, rather than the date of conviction, the operative date. However, as written, the statute clearly makes the date of conviction or plea the operative date for the "three violation" rule.

When the meaning of the statutory language is unambiguous, it must be given effect even though it might produce a result in a particular case which was not contemplated or intended. The fourth paragraph of the syllabus in State ex rel. Nimberger v. Bushnell, 95 Ohio St. 203 (1917), states:

4. When the meaning of the language employed in a statute is clear, the fact that its application works an inconvenience or accomplishes a result not anticipated or desired should be taken cognizance of by the legislative body, for such consequence can be avoided only by a change of the law itself, which must be made by legislative enactment and not by judicial construction.

The language of R.C. 4507.162 is unambiguous. That language must be given its ordinary and accepted meaning unless the legislature has manifested a different intention. City of Cleveland v. Public Utilities Commission of Ohio, 130 Ohio St. 503 (1936); R.C. 1.42. Furthermore, in the interpretation of a statute, parts of its language may not be read out of the law. On the contrary, significance and effect must be given to each word and phrase. Wachendorf v. Shaver, 149 Ohio St. 231, 237 (1948); R.C. 1.47(B).

Applying the plain and accepted meaning of the language of R.C. 4507.162 and giving effect to each phrase, I find that the date of conviction or plea of guilty, not the date of violation, is the operative date.

Under an analogous section of Ohio's motor vehicle laws, R.C. 4507.40(K), a person's driving license may be suspended for six months whenever he has at least twelve points charged against him in a two-year period for driving violations. In Markham v. Theobald, 152 Colo. 540, 383 P. 2d 791 (1963), the Colorado Supreme Court interpreted a similar section of its laws and held that the points are to be counted as of the date of conviction, not as of the date of violation. In other words, the date of conviction is the determinative date affecting the operation of the statute. There is no retroactivity back to the date of violation. I conclude that the same analysis applies to the suspension of a probationary operator's license pursuant to R.C. 4507.162.

Therefore, it is my opinion, and you are advised, that the probationary operator's license of a person who commits a third moving traffic violation before his eighteenth birthday, but who neither is convicted of, nor pleads guilty to, the violation until after his eighteenth birthday, may not be suspended under R.C. 4507.162.