

1442.

TRIAL JUDGE MAY NOT REVOKE DRIVER'S LICENSE OF
MINOR SEVENTEEN YEARS OF AGE WHERE CITY OR-
DINANCE DEFINES DRIVING AGE AT EIGHTEEN.

SYLLABUS:

A trial judge of a court of record has no authority under the provisions of Subsection b of Section 6296-30 of the General Code, to suspend or revoke the driver's license of a minor of the age of seventeen years who has been convicted of or pleads guilty to the offense of operating a motor vehicle in violation of a city ordinance which prohibits the operation of motor vehicles by minors under the age of eighteen years, as such an offense can not be considered as an offense involving the reckless operation of a motor vehicle.

COLUMBUS, OHIO, November 9, 1937.

HON. FRANK T. CULLITAN, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR: This is to acknowledge receipt of your recent communication, which reads as follows:

“Will you kindly render an opinion upon the following question, to-wit: Does the Drivers' License Law (Section 6296-1 et seq. G. C.) authorize the suspension or revocation of an operator's license by a court of record for the violation of a city ordinance which requires that all persons shall have obtained such license and no person under the age of 18 years shall operate a motor vehicle on any street or highway in the city, where the violation consists of a minor properly licensed but who is only 17 years of age?”

The facts out of which this question arises are substantially as follows: Section 2501 of Ordinance 105586 of the City of Cleveland reads as follows:

‘Sec. 2501. Drivers' age-license required. No person required by law to be licensed to operate a motor vehicle, unless he shall first have obtained such license, and no person under the age of 18 years, shall operate any motor vehicle on any street or highway in the city of Cleveland, nor shall any person being the owner, bailee, lessee, or custodian of any motor vehicle permit any person to operate such motor vehicle who is not so licensed or is a minor under the age of eighteen years.’

A boy of the age of 17 years was charged with being a

delinquent in that he unlawfully violated the above quoted section by operating an automobile in Cleveland, Ohio, he being under the age of 18 years.

The boy was properly licensed, but the question has arisen as to whether or not the Judge of the Juvenile Court can revoke or suspend the license inasmuch as the only violation was the fact that the boy was under 18 years of age and operated a motor vehicle on the streets of Cleveland.

Your attention is particularly directed to Sections 6296-16, 17, 6296-10, 6296-26 and 6296-30 (a), (b).

Section 6296-30 (b) involves the interpretation of the phrase 'relating to reckless operation.' In other words, does that phrase mean that any violation of the laws or ordinances relating to the operation of a motor vehicle such as being under age give the right to revoke or suspend the license or does it mean that there must be a violation connected with the reckless operation of the motor vehicle in order to give the right to suspend or revoke the license?"

Subsection b of Section 6296-30 of the General Code, provides as follows:

"Whenever a person is found guilty under the laws of this state or any ordinance of any political subdivision thereof, of operating a motor vehicle, in violation of such laws or ordinances, relating to reckless operation, the trial court of any court of record may, in addition to or independent of all other penalties provided by law, suspend for any period of time or revoke the license to drive of any person so convicted or pleading guilty to such offenses for such period as it may determine, not exceeding the period of one year."

A proper determination of the question presented by your inquiry is dependent entirely upon the interpretation that is to be given the phrase "relating to reckless operation" as that phrase is used in subsection b of Section 6296-30, supra. In other words, if that phrase can be so interpreted as to include offenses arising out of the operation of a motor vehicle by a minor properly licensed by the State of Ohio but in violation of a city ordinance which prohibits the operation of motor vehicles by minors under the age of eighteen years, then it necessarily follows that a trial judge of a court of record would, pursuant to the authority conferred by subsection b of Section 6296-30, supra, have the power in addition to and independent of all other

penalties provided by law, to suspend or revoke the license to drive of such minor. As will be noted from a reading of the above quoted provision, Section 6296-30 is a penal statute and in accordance with the well recognized rule of statutory construction, the provisions thereof should be construed and interpreted strictly against the state and liberally in favor of the accused. 37 O. J. page 744.

It is further a well established rule of statutory construction that in the interpretation and construction of penal statutes, the provisions thereof are not to be extended in their operation by inference, implication or construction beyond the manifest intention of the legislature and particularly a construction should be avoided, the effect of which would include persons or things not within the descriptive terms of the statute. 37 O. J. 747.

Therefore, in applying the above rules of statutory construction to the provisions of subsection b of Section 6296-30, supra, it becomes necessary for the purpose of this opinion to definitely ascertain just what acts of omission or commission on the part of an operator of a motor vehicle must exist, before such person can be charged with the offense of reckless operation of a motor vehicle, and in so doing, an examination and consideration of the statutes relating to the reckless operation of a motor vehicle becomes necessary. Section 12603-1, General Code, provides as follows:

“Whoever operates a motor vehicle on the public roads or highways without due regard for the safety and rights of pedestrians and drivers and occupants of all other vehicles, and so as to endanger the life, limb or property of any persons while in the lawful use of the roads or highways shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined as hereinafter provided.”

It will be noted from a consideration of the above section, the qualifications of an operator of a motor vehicle are not in any manner contemplated or embraced within the meaning of the language therein contained relating to the reckless operation of a motor vehicle. In other words, to constitute the offense of reckless operation of a motor vehicle certain conditions must exist which establish the fact that a person has operated a motor vehicle in such a manner so as to endanger the life, limb and property of other persons while in the lawful use of the roads and highways of this State. Consequently, by no process of reasoning can it be said that a minor of the age of seventeen years, properly licensed by the State, but operating a motor vehicle in violation of a city ordinance which prohibits the operation of motor vehicles by minors under the age of eighteen

years is guilty of the offense of operating a motor vehicle in such a manner so as to endanger the life, limb and property of other persons in the lawful use of the roads and highways of this State.

Therefore, in view of the foregoing and in specific answer to your question, it is my opinion that a trial judge of a court of record has no authority under the provisions of subsection b of Section 6296-30 of the General Code, to suspend or revoke the driver's license of a minor of the age of seventeen years who has been convicted of or pleads guilty to the offense of operating a motor vehicle in violation of a city ordinance which prohibits the operation of motor vehicles by minors under the age of eighteen years, as such an offense can not be considered as an offense involving the reckless operation of a motor vehicle.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1443.

APPROVAL—BONDS OF TOLEDO CITY SCHOOL DISTRICT,
LUCAS COUNTY, OHIO, \$30,000.00. (Unlimited.)

COLUMBUS, OHIO, November 9, 1937.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.
GENTLEMEN:

RE: Bonds of Toledo City School Dist., Lucas
County, Ohio, \$30,000.00. (Unlimited.)

I have examined the transcript relative to the above bonds purchased by you. These bonds comprise part of an issue of refunding bonds, Series C, in the aggregate amount of \$72,000, dated October 1, 1934, bearing interest at the rate of $4\frac{1}{4}\%$ per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said school district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.