

OPINION 65-192**Syllabus:**

1. If the conditions as set forth in Section 4507.162, Revised Code, are present, the registrar must revoke the driving privileges of the licensee involved.

2. The registrar has no discretion or authority to grant any kind of driving privilege to a licensee whose probationary license is revoked pursuant to Section 4507.162, Revised Code.

To: Lou Wilsch, Registrar, Bureau of Motor Vehicles, Columbus, Ohio
By: William B. Saxbe, Attorney General, October 25, 1965

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

"It would appear that the revocation required under the provisions of Section 4507.162 of the Revised Code is a mandatory revocation without discretionary authority to rescind or modify the revocation in any manner whatsoever.

"However, in view of the number of questions

regarding the mandatory aspect, and requests for limited driving, I am requesting an Attorney General ruling in this regard."

Section 4507.162, Revised Code, states:

"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 ordinances 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.

"No application for a chauffeur's license or an operator's license shall be received from any person whose probationary operator's license, probationary chauffeur's license, or restricted license has been so revoked until the revocation period has expired and a temporary instruction permit has been issued and the applicant has submitted to the examination for an operator's or chauffeur's license as provided for in section 4507.11 of the Revised Code."

The above quoted section of the Revised Code is clear and unequivocal. The first consideration to be given when considering the character of the section herein examined is to the language used by the General Assembly. The first sentence states in part:

"The registrar of motor vehicles shall revoke the probationary chauffeur's license, probationary license, * * *" (Emphasis added)

In the case of Dayton vs. Horstman, 77 Ohio Law Abs. 570 (1957), the court, at page 576, said this:

"Where the public or individuals have a de jure claim that the power be exercised, or where something is directed to be done for the sake of justice, or for the public good 'shall' is construed as being mandatory."

Section 4507.162, supra, directs that something be done for the public good. Revocation of the privilege of operating a motor vehicle stands as a warning to those who might other-

wise endanger the citizens of Ohio. Those persons who abuse the driving privilege will have this privilege revoked to protect other drivers and pedestrians. Thus the word "shall" as used in Section 4507.162, supra, must be construed as mandatory, and the registrar must, the statutory prerequisites being present, revoke the probationary license.

A further indication of the legislative intent is the final paragraph of Section 4507.162, supra. This paragraph states that no application for any kind of operator's license shall be made during the period of revocation. It further provides that the person whose privilege has been revoked shall, at the end of the period, obtain a temporary permit and undergo an examination in order to obtain a new operator's license. This language indicates that the legislature intended that one whose privilege has been revoked shall not operate a motor vehicle during the period of revocation.

In comparing the Section here in question to Section 4507.40, Revised Code, a section of somewhat similar purpose, it is worthy of note that the latter section makes specific allowance for discretion on the part of the court. Section 4507.40, supra, states in part:

"If the court finds from the evidence submitted that such person has failed to show cause why his driving privileges should not be suspended then the court shall assess the cost of such proceeding against such person and shall impose the suspension provided in division (K) or withhold such suspension, or part thereof, and provide such conditions or probation as the court deems proper." (Emphasis added)

A reading of Section 4507.162, Revised Code, discloses that no similar discretionary authority is given to the registrar.

Section 4507.162, supra, provides that "The registrar * * * shall revoke * * *". The term "revoke" is defined in Black's Law Dictionary, Fourth Edition at page 1485 as follows:

"REVOKE. To annul or make void by recalling or taking back, cancel, rescind, repeal, reverse." (Citation omitted)

Section 4507.40, supra, provides for a suspension of driving privileges. "Suspend" is defined in Black's Law Dictionary, supra, at page 1615 as follows:

"SUSPEND. To interrupt; to cause to cease for a time; to postpone; to stay, delay or hinder; to discontinue temporarily, but with an expectation or purpose of resumption.

"* * * * * * * * *"
(Citations omitted)

Thus, while Section 4507.40, supra, provides for a temporary discontinuance of driving privileges, Section 4507.162, supra, provides for the making void, cancellation and repeal of driving

privileges. This difference would also lend itself to an indication that the legislative intent was that action taken by the registrar pursuant to Section 4507.162, supra, would result in there being no driving privilege in effect. With no privilege remaining, it seems obvious that no driving may be done during the period of revocation.

Therefore, it is my opinion, and you are hereby advised that:

1. If the conditions as set forth in Section 4507.162, Revised Code, are present, the registrar must revoke the driving privileges of the licensee involved.

2. The registrar has no discretion or authority to grant any kind of driving privilege to a licensee whose probationary license is revoked pursuant to Section 4507.162, Revised Code, during the period of revocation.