

OPINION NO. 83-062

Syllabus:

The license reinstatement requirements of R.C. 4511.191(J) apply only to persons whose licenses are suspended under R.C. 4511.191(D) or (K) or R.C. 4507.16(B). Such suspensions do not occur as the result of convictions for violations of municipal ordinances, although suspensions under R.C. 4511.191(D) or (K) may occur in conjunction with citations or arrests for violations of municipal ordinances

relating to operating a motor vehicle while under the influence of alcohol.

To: Kenneth R. Cox, Director, Department of Highway Safety, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, October 26, 1983

I have before me your request for an opinion concerning whether an individual convicted under a municipal ordinance relating to operating a vehicle while under the influence of alcohol or any drug of abuse is subject to the license reinstatement requirements of R.C. 4511.191(J), as recently enacted by Am. S.B. 432, 114th Gen. A. (1982) (eff. March 16, 1983). In response to your inquiry, an examination of R.C. 4511.19, R.C. 4507.16(B), and R.C. 4511.191(D) and (K) is necessary to determine if the reinstatement requirements of R.C. 4511.191(J) apply to individuals convicted under municipal ordinances.

R.C. 4511.191(J) provides that, following the suspension of a license in certain circumstances, proof of financial responsibility and payment of a \$75.00 license reinstatement fee be provided prior to reinstatement of the license. R.C. 4511.191(J) states in full:

At the end of the suspension period under this section or division (B) of section 4507.16 of the Revised Code and upon the request of the person whose operator's or chauffeur's license or permit was suspended, the registrar shall return the license or permit to the person upon both of the following:

(1) A showing by the person that he had proof of financial responsibility, a policy of liability insurance in effect that meets the minimum standards set forth in section 4509.51 of the Revised Code, or proof, to the satisfaction of the registrar, that the person is able to respond in damages in an amount at least equal to the minimum amounts specified in section 4509.51 of the Revised Code;

(2) Payment by the person of a seventy-five dollar license reinstatement fee to the bureau of motor vehicles, which fee shall be credited by the registrar to the drivers' treatment and intervention special account that is hereby established in the state special revenue fund. The drivers' intervention special account shall be used to pay the costs of driver treatment and intervention programs operated pursuant to sections 3720.04 and 3720.06 of the Revised Code. The director of health shall determine the share of the drivers' treatment and intervention special account that is to be allocated to treatment programs authorized by section 3720.04 of the Revised Code, and the share of the special account that is to be allocated to intervention programs authorized by section 3720.06 of the Revised Code.

You inquire whether an individual convicted under a municipal ordinance for driving while under the influence of alcohol or any drug of abuse is subject to the reinstatement requirements of R.C. 4511.191(J). By the terms of R.C. 4511.191(J), the reinstatement provisions set forth in that division apply at the end of a suspension period under R.C. 4511.191 or R.C. 4507.16(B). Divisions (D) and (K) of R.C. 4511.191 provide for license suspension in various circumstances that would make R.C. 4511.191(J) applicable.

R.C. 4511.191(D) provides, in certain circumstances,¹ for the suspension of the license of a person "under arrest for the offense of driving a motor vehicle while

¹ R.C. 4511.191(D) states in full:

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 (C) of

under the influence of alcohol" who refuses upon the request of a police officer to submit to a chemical test of his blood, breath, or urine for the purposes of determining the alcoholic content of his blood, breath or urine. R.C. 4511.191(D) does not specify that it applies only to arrests for state offenses. Rather, it appears to apply also to arrests for violations of municipal ordinances prohibiting driving while under the influence of alcohol. Thus, license suspension under R.C. 4511.191(D) for a refusal as outlined therein would subject the offender to the reinstatement requirements of R.C. 4511.191(J) whether the offense for which he was arrested was the violation of a state statute or of a municipal ordinance. I note, however, that such suspension would not result from a conviction for violation of a municipal ordinance, as is contemplated by your question, but rather from an arrest and subsequent refusal to be tested.

R.C. 4511.191(K) provides for suspension of a license when a person is charged with a violation of R.C. 4511.19² or of a municipal ordinance relating to operating a motor vehicle while under the influence of alcohol, when a test of alcohol concentration administered to the person is at a certain level or there is a refusal to take the test, and when one of several other factors is also present. R.C. 4511.191(K) states in full:

If a person is charged with a violation of section 4511.19 of the Revised Code or of a municipal ordinance relating to operating a motor vehicle while under the influence of alcohol and if the results of a chemical test administered pursuant to this section indicate that the blood of the person contained a concentration of ten-hundredths of one percent or more by weight of alcohol, a concentration of ten

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 in this state while under the influence of alcohol and that the person refused to submit to the chemical 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 one year, 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 one year after the date of the alleged violation. The suspension or denial shall continue for the entire one year period subject to review as provided in this section and subject to termination as provided in division (I) of this section.

² R.C. 4511.19 sets forth a prohibition against driving while under the influence of alcohol or drugs of abuse. It states, in part:

(A) No person shall operate any vehicle, streetcar, or trackless trolley within this state if any of the following apply:

(1) The person is under the influence of alcohol or any drug of abuse, or the combined influence of alcohol and any drug of abuse;

(2) The person has a concentration of ten-hundredths of one percent or more by weight of alcohol in his blood;

(3) The person has a concentration of ten-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his breath;

(4) The person has a concentration of fourteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his urine.

hundredths of one gram or more by weight of alcohol per two hundred ten liters of his breath, or a concentration of fourteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his urine, at the time of the alleged offense, or refuses to consent to a chemical test of his blood, breath, or urine to determine alcohol content under this section, the court shall immediately suspend the person's operator's or chauffeur's license or permit or nonresident operating privilege, if the court or referee at the initial appearance, which shall be held within five days from the date of the citation or arrest, determines that one of the following is true:

(1) The person has previously been convicted of a violation of section 4511.19 of the Revised Code or of a municipal ordinance relating to operating a motor vehicle while under the influence of alcohol;

(2) At the time of the arrest, the person's driver's or chauffeur's license or permit or nonresident operating privilege was suspended or revoked;

(3) The person caused death or serious physical harm to another person;

(4) The person failed to appear at the initial appearance;

(5) The court or referee determines that the person's continued driving will be a threat to public safety.

The suspension shall continue until the complaint alleging a violation of section 4511.19 of the Revised Code or of the municipal ordinance relating to operating a motor vehicle while under the influence of alcohol is adjudicated on the merits by the trial court, or until the trial court, upon motion, determines by a preponderance of the evidence that there was no probable cause for the arrest.

The reinstatement provisions of R.C. 4511.191(J) apply to suspensions under this division.

Thus, if a license is suspended pursuant to R.C. 4511.191(K)—meaning that one of the five criteria set forth in the division is present—compliance with the reinstatement provisions of R.C. 4511.191(J) must follow, whether the violation which is charged is of R.C. 4511.19 or a municipal ordinance. However, the suspension of an operator's license pursuant to this provision does not result from conviction for violation of a municipal ordinance, as contemplated by your question, but rather from a charge of driving while under the influence of alcohol and the results of chemical testing or the refusal to consent to such testing, together with one of the other five criteria of R.C. 4511.191(K). The reinstatement provisions of R.C. 4511.191(J) apply to such a suspension whether the original charge is for violation of R.C. 4511.19 or a similar municipal ordinance.

As stated above, R.C. 4511.191(J) also applies at the end of suspension periods imposed under R.C. 4507.16(B). R.C. 4507.16(B) provides for a mandatory revocation or suspension of the operator's license of anyone who violates R.C. 4511.19. R.C. 4507.16(B) states in full:

Except as otherwise provided in this section,³ the trial judge of any court of record, in addition to or independent of all other penalties provided by law or by ordinance, shall revoke the operator's or chauffeur's license or permit or nonresident operating privilege of any person who is convicted of or pleads guilty to a violation of section 4511.19 of the Revised Code or suspend the license, permit, or privilege as follows:

(1) If the offender has not been convicted, within five years of the offense, of a violation of section 4511.19 of the Revised Code or of

³ R.C. 4507.16(D) provides an exception for granting occupational driving privileges in certain circumstances during the period in which a suspension under division (B) would otherwise be imposed. R.C. 4507.16(F) restricts the trial court from suspending the initial periods of license suspension provided under division (B).

a municipal ordinance relating to operating a motor vehicle while under the influence of alcohol, a drug of abuse, or both, the court shall suspend the offender's operator's or chauffeur's license or permit or nonresident operating privilege for not less than sixty days nor more than three years.

(2) If the offender has been convicted, within five years of the offense, of a violation of section 4511.19 of the Revised Code or of a municipal ordinance relating to operating a motor vehicle while under the influence of alcohol, a drug of abuse, or both, the court shall suspend the offender's operator's or chauffeur's license or permit or nonresident operating privilege for not less than one hundred twenty days nor more than five years.

(3) If the offender has been convicted, within five years of the offense, of more than one violation of section 4511.19 of the Revised Code or of a municipal ordinance relating to operating a motor vehicle while under the influence of alcohol, a drug of abuse, or both, the court shall suspend the offender's operator's or chauffeur's license or permit or nonresident operating privilege for not less than one hundred eighty days nor more than ten years. (Emphasis and footnote added.)

R.C. 4507.16(B) does not provide for such suspension in the event of conviction of, or pleading guilty to, a municipal ordinance, though it does recognize that the trial judge, in addition to revoking or suspending a driver's license for violations of R.C. 4511.19, may impose other penalties pursuant to a valid municipal ordinance, see generally City of Columbus v. Beery, 104 Ohio App. 344, 149 N.E.2d 22 (Franklin County 1957), and it does provide that prior convictions of violations of municipal ordinances for driving while under the influence may affect the length of suspensions imposed under its provisions. If, therefore, an individual were convicted of, or pleaded guilty to, a violation of a municipal ordinance only, R.C. 4507.16(B) would not be applicable, and would not bring the reinstatement requirements of R.C. 4511.19(J) into effect.

It may be argued that, in enacting Am. S.B. 432, the General Assembly did not intend to differentiate between persons arrested for state violations of driving under the influence and those arrested under municipal ordinances for the same offense. Indeed, throughout most of the Act, the statute provides for application of the same provisions regardless of whether the violation is of a state statute or a municipal ordinance. See, e.g., R.C. 4507.16(B)(1), (2), (3); R.C. 4511.19(B) ("in any criminal prosecution for a violation of this section or of an ordinance of any municipal corporation relating to operating a motor vehicle while under the influence of alcohol, the court may admit evidence on the concentration of alcohol in the defendant's blood, breath, or urine at the time of the alleged violation as shown by chemical analysis of the defendant's blood, urine, breath, or other bodily substance withdrawn within two hours of the time of such alleged violation"). R.C. 4507.16(B), however, specifically provides for revocation or suspension only for violations of R.C. 4511.19. While it is possible that the omission of a parallel reference to municipal ordinances may be viewed as an oversight of the legislature, the rules of statutory construction must apply to leave the law as written.

In applying the rules of statutory construction, the meaning of a statute must be determined, if possible, from the face of the statute itself. Goodyear Aircraft Corp. v. Peck, 162 Ohio St. 200, 122 N.E.2d 700 (1954); Slingluff v. Weaver, 66 Ohio St. 621, 64 N.E. 574 (1902). The primary rule in construing a statute is always to arrive at the intention of the legislature in enacting the statute, which is determined by the language of the statute, and if such language employed in a statute is free from ambiguity and is plain, clear and distinct, there is no occasion for a court to resort to the history of such legislation, or to other matters, as a guide in the interpretation of such statute. Knachel v. Ferguson, 70 Ohio App. 60, 69, 40 N.E.2d 470, 475 (Franklin County 1941). The issue, then, is not what the legislature intended to enact, but the meaning of what it did enact. State ex rel. Mooney v. Ferguson, 142 Ohio St. 279, 51 N.E.2d 731 (1943).

In applying these rules to R.C. 4511.19(J), I note that the statute is clear on its face that the reinstatement requirements will apply only for suspensions under

R.C. 4507.16(B) or R.C. 4511.191(D) or (K). Both R.C. 4507.16(B) and R.C. 4511.191 are silent as to suspensions for violations of municipal ordinances, and an intent to include ordinances cannot be inferred from the legislation adopted in this case. The Slingluff case states that "[t]he object of judicial investigation in the construction of a statute is to ascertain and give effect to the intent of the law-making body which enacted it." 66 Ohio St. 621, 64 N.E. 574 (syllabus, paragraph 1). However, the "intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation." 66 Ohio St. 621, 64 N.E. 574 (syllabus, paragraph 2).

Thus, since R.C. 4511.191(J) applies only at the end of suspension periods under R.C. 4511.191(D) and (K), or R.C. 4507.16(B), and such suspension periods do not occur as the result of a conviction of a municipal ordinance, the reinstatement requirements of R.C. 4511.191(J) do not apply to suspensions resulting from convictions for violations of municipal ordinances. As discussed above, however, suspensions under R.C. 4511.191 may occur in conjunction with a citation or arrest for a violation of a municipal ordinance, though not as a result of a conviction for such ordinance, and in such cases the reinstatement requirements of R.C. 4511.191(J) will apply.

It is, therefore, my opinion, and you are accordingly advised, that the license reinstatement requirements of R.C. 4511.191(J) apply only to persons whose licenses are suspended under R.C. 4511.191(D) or (K) or R.C. 4507.16(B). Such suspensions do not occur as the result of convictions for violations of municipal ordinances, although suspensions under R.C. 4511.191(D) or (K) may occur in conjunction with citations or arrests for violations of municipal ordinances relating to operating a motor vehicle while under the influence of alcohol.