

OPINION NO. 79-096

Syllabus:

In a hearing of a licensee's appeal from a license suspension pursuant to R.C. 4507.40, the Bureau of Motor Vehicles must present a prima facie case of a valid suspension by submitting into evidence a

certified copy of the licensee's record of convictions and bond forfeitures.

To: Dean L. Dollson, Registrar, Bureau of Motor Vehicles, Columbus, Ohio
By: William J. Brown, Attorney General, December 18, 1979

I have before me your request for my opinion as to whether you are required to furnish a copy of a licensee's record of convictions and bond forfeitures to the court which is hearing the licensee's appeal from suspension of his or her driver's license pursuant to R.C. 4507.40(K).

R.C. 4507.40 sets up a point system for motor vehicle violations, and, in division (K) of that section, provides that when the registrar of the Bureau of Motor Vehicles determines that an individual has accumulated not less than twelve points in a two year period, the registrar shall notify the licensee that his or her driver's license shall be suspended for six months. R.C. 4507.40(K) further states that suspension becomes effective on the twentieth day after notice is mailed, "unless the licensee files a petition in the municipal court or the county court, . . .alleging that the licensee can show cause why his driving privileges should not be suspended for a period of six months."

The Bureau is required to maintain records of convictions and bond forfeitures for motor vehicle violations under R.C. 4507.40(F), and the registrar must, "upon written request of a licensee petitioning under division (K) of this section, furnish the licensee a copy of the registrar's record of the convictions and bond forfeitures of the person certified by the registrar." R.C. 4507.40(N). R.C. 4507.40(N) also provides, in part, as follows:

When the record includes not less than twelve points charged against the person within a two-year period, it is prima-facie evidence that the person is a repeat traffic offender and his driving privilege shall be suspended as provided in this section.

In hearing the matter and determining whether the person has shown cause why his driving privileges should not be suspended, the court shall decide the issue upon the record certified by the registrar and such additional relevant, competent, and material evidence as either the registrar or the person whose license is sought to be suspended submits. (Emphasis added.)

Prior to the amendment of R.C. 4507.40 by Am. Sub. H.B. No. 380 (1968), R.C. 4507.40(K) placed the onus upon the registrar, upon accumulation by a licensee of not less than twelve points, to notify the prosecuting attorney of the county where the licensee resided to apply to a court for an order for the licensee to appear and show cause why his or her license should not be suspended. R.C. 4507.40(N) also required the registrar, at the same time, to "file in such court a copy of the registrar's record of the convictions and bond forfeitures of such person certified by the registrar." H.B. No. 380 not only amended R.C. 4507.40(K) to place upon the licensee the obligation to file a petition alleging an ability to show cause, but it also deleted the requirement in division (N) of R.C. 4507.40 that the registrar file a certified copy of the record of convictions and bond forfeitures with the court. Substituted was the current requirement that the registrar furnish the licensee with a certified copy of the record upon the licensee's written request. Thus, there is no longer any statutory mandate that the registrar furnish a court with a certified copy of the licensee's record. However, it is my opinion, for the reasons set forth hereinafter, that the registrar must submit into evidence a certified copy of such record in order to establish a prima facie case of a valid license suspension, at which point the licensee has the burden to show cause why driving privileges should not be suspended.

R.C. 4507.40(N) expressly provides that a record which includes not less than

twelve points charged against a person within a two-year period constitutes prima facie evidence that the person is a repeat traffic offender. It also provides that the court "shall decide the issue upon the record certified by the registrar and such additional . . . evidence as either the registrar or the person whose license is sought to be suspended submits." (Emphasis added.) Hence, the certified record must be part of the evidence submitted. Until a prima facie case is made by the registrar, the person whose license is sought to be suspended has no burden to show cause why his driving privileges should not be suspended. See Old Ben Corp. v. Interior Bd. of Mine Operations Appeals, 523 F. 2d 25, 39-40 (7th Cir. 1975) (on rehearing) (a statute which places ultimate burden of proof upon an individual against whom an order is made does not relieve government from obligation to establish prima facie case to support its order).

This is the position of the Pennsylvania courts with respect to license suspensions based upon an accumulation of points. Section 1550 of the Pennsylvania Vehicle Code, 75 Pa. Cons. Stat. Ann. §1550 (Purdon), requires the licensee to file a petition for a hearing in the court of common pleas upon notice that his or her operating privileges have been suspended. Suspension is mandated upon accumulation of eleven or more points. 75 Pa. Cons. Stat. Ann. §1539(a) (Purdon). Under this statutory scheme, the courts have held that the state must, by submitting proof of the licensee's convictions, make out a prima facie case, at which point it is incumbent upon the licensee to prove that he or she was not convicted, or that the records of convictions are not correct. Commonwealth v. Siedlecki, 7 Pa. Commw. Ct. 130, 300 A. 2d 287 (1973). Failure of the Secretary of Transportation to submit records of the convictions will result in a decision in favor of the licensee. Commonwealth v. Bernstein, 7 Pa. Commw. Ct. 594, 300 A. 2d 905 (1973).

Support for the view taken by the Pennsylvania courts may be found, at least by implication, in Money v. Dollison, 56 Ohio Misc. 29, 383 N.E. 2d 916 (Miamisburg Mun. Ct. 1978), and Branson v. Curry, No. 74AP-284 (Ct. App. Franklin County, decided October 29, 1974). In the latter case, the licensee claimed error in the affirmance of suspension, alleging that the registrar had submitted no competent evidence. The registrar had, in fact, filed with the court a certified copy of the licensee's record of convictions and bond forfeitures. The court overruled the licensee's assignment of error, pointing out that "the certified copy of the conviction record filed in the court by the defendant [registrar] is not only evidence but it is prima facie evidence, placing the burden upon the plaintiff to show cause why his driving privileges should not be suspended." Op. at p. 3. And in Money, supra, the licensee argued that the registrar, in failing to show by the certified record of the bureau under which statute or ordinance the licensee had been convicted, failed to present evidence upon which the court could make a determination of proper point assessment. The court agreed with this claim, stating as follows:

Their [Bureau of Motor Vehicles'] failure to provide the necessary information on the certified record of the Bureau of Motor Vehicles as to which state or municipal suspension or revocation under which the petitioner was convicted is cause for the Bureau's failure to show sufficient evidence to support a six point assessment. Therefore, without additional information the Bureau would fail in its proof of a valid point suspension. 56 Ohio Misc. at 32, 383 N.E. 2d at 918 (emphasis added).

Both Money and Branson implicitly recognize the rule that the proponent of an order has the burden of proof, Goodyear Synthetic Rubber Corp. v. Department of Industrial Relations, 76 Ohio L. Abs. 146 (C.P. Franklin County 1954), and further support the proposition that the Bureau is required to submit an accurate record of the points accumulated by a licensee in order to establish a prima facie case of a valid suspension. Thus, the Bureau must proffer into evidence a certified copy of a licensee's record of convictions and bond forfeitures. After a certified copy of the record has been introduced, the licensee has the burden to show cause why his or her driver's license should not be suspended.

Accordingly, it is my opinion, and you are advised, that in a hearing of a licensee's appeal from a license suspension pursuant to R.C. 4507.40, the Bureau of Motor Vehicles must present a prima facie case of a valid suspension by submitting into evidence a certified copy of the licensee's record of convictions and bond forfeitures.