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DRIVERS LICENSE—CHAUFFEUR—FAILURE TO DISPLAY
A MISDEMEANOR WHEN IN POSSESSION—MISDEMEANOR
WHEN AVAILABLE AND REFUSAL TO DISPLAY—4507.35
R. C.—4507.01 R. C.; STATE V. FARREN (140 O. S. 473, 1942).

SYLLABUS:

Under the terms of Section 4507.35, Revised Code, when a demand is properly made upon the operator of a motor vehicle or a chauffeur that he display his license or furnish satisfactory evidence that he has such license, such operator or chauffeur is guilty of a misdemeanor if he has his license on or about his person and refuses to display it, but such operator or chauffeur is not guilty of an offense under such section if he fails to display his license by reason of the fact that such license is not on or about his person and accessible for display.

Columbus, Ohio, January 3, 1957

Hon. C. H. Anderson, Prosecuting Attorney
Trumbull County, Warren, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The attention of this office has been called to Ohio Revised Code, Section 4507.35, which reads as follows:

“‘The operator or chauffeur of a motor vehicle shall display his license, or furnish satisfactory proof that he has such license, upon demand of any peace officer or of any person damaged or injured in any collision in which such licensee may be involved. When a demand is properly made and the operator or chauffeur has his license on or about his person, he shall not refuse to display said license. Failure to furnish satisfactory evidence that such person is licensed under sections 4507.01 to 4507.30, inclusive, of the Revised Code, when such person does not have his license on or about his person shall be prima-facie evidence of his not having obtained such license.’

“On numerous occasions at the Warren Municipal Court, defendants have been charged with failure to display a license and I understand that several have plead guilty and have accordingly been fined. It occurs that perhaps the charge of failure to

display a license was in many cases, not properly brought and that because of the reading of the above referred to section, the individual defendant should have been afforded an opportunity or rather advised of his opportunity to furnish some evidence of his having a license, so as to rebut the prima-facie evidence of his not having obtained such license. I believe that penalties as called for in Section 4507.99, have in some cases been exacted.

“Your further attention is called to the case of *State v. Farren* of 140 O. S. 473, wherein the Supreme Court held that under Ohio General Code, Section 6296-14 B, that:

“‘Failure of the operator of a motor vehicle to produce his drivers license or to furnish satisfactory evidence thereof, upon demand of a peace officer, does not constitute a misdemeanor.’

“It will be noted that the new Ohio Revised Code, Section 4507.35 is quite similar to the General Code Section 6296-14 B, however, they are not exact and we are somewhat concerned as to whether or not a violation of the new code section constitutes a misdemeanor, or whether on the other hand, it is merely a regulatory statute without penalty. It will also be noted that in the Page’s Edition of the Revised Code, under Section 4507.35, a reference is made to the Penalty Section, 4507.99.”

The case of *State v. Farren*, 140 Ohio St. 473, cited in your letter was decided in 1942. Section 6296-14 (b), General Code, as it then read, and which was interpreted by the court in that case, was as follows:

“The operator or chauffeur of a motor vehicle shall display his license or furnish satisfactory proof that he has such license upon demand of any peace officer or of any person damaged or injured in any collision in which such licensee may be involved. Failure to produce such license on demand, or to furnish satisfactory evidence that such person is duly licensed under this act, shall be prima facie evidence of his not having obtained such license.”

The syllabus in the *Farren* case reads:

“1. Under the provisions of Section 6296-14 (b), General Code, the failure of the operator of a motor vehicle to produce his driver’s license or to furnish satisfactory evidence thereof upon demand of a peace officer does not constitute a misdemeanor.

“2. This section specifically provides that such failure on the part of the driver shall constitute ‘prima facie evidence of his not having obtained such license’.”

In its opinion the court said:

“The dispute arises by reason of a difference of opinion as to the significance of the last sentence of Section 6296-14 (b) which provides that ‘Failure to produce such license on demand, or to furnish satisfactory evidence that such person is duly licensed under this act, shall be prima facie evidence of his not having obtained such license.’ The defendant maintains that this section itself specifically establishes the result or penalty of non-compliance therewith, and that hence there is no reason to infer an intention on the part of the General Assembly to provide a second result in the form of the penalty fixed by the general terms of Section 6296-30. This is the view adopted by the Court of Appeals; and after a study of the above-mentioned sections this court has reached a similar conclusion. It is a cardinal principle of statutory construction that a specific provision shall prevail over one that is only general. But in this instance it is unnecessary to rely upon so insecure a basis as mere inference, since by their own terms the general provisions of Section 6296-30 are made applicable ‘unless another penalty is in this act or by the laws of this state provided.’ Section 6296-14 (b) does provide another penalty.”

The opinion of the Clinton County Court of Appeals, of which the Supreme Court approved, is reported in 40 Ohio Law Abstract, 340, and reads at page 344:

“In 6296-14 G. C. the General Assembly expressly stated that the effect of failure to display the license or give satisfactory proof of having it was to create a prima facie case that there was no license. There is no suggestion that the failure to display was denounced as unlawful or that the act was made criminal by the imposition of a penalty. The statute bears abundant evidence in other sections that the General Assembly knew how to express its intent to denounce an act as unlawful or to make the act criminal by providing for the imposition of a penalty. It did not do so in this section. * * *”

From these quotations, the reasoning of the courts seems abundantly clear.

The section of the General Code thus interpreted was amended within a few months of the decision in *State v. Farren*. The amended Section 6296-14 (b), General Code, 120 Ohio Laws 293, effective May 25, 1943, read:

“The operator or chauffeur of a motor vehicle shall display his license or furnish satisfactory proof that he has such license

upon demand of any peace officer or of any person damaged or injured in any collision in which such license may be involved. When a demand is properly made and the operator or chauffeur has his license on or about his person and refuses to display it, he shall be guilty of a misdemeanor and upon conviction shall be punished as provided in Section 6296-30. Failure to furnish satisfactory evidence that such person is duly licensed under this act when such person does not have his license on or about his person shall be prima facie evidence of his not having obtained such license."

This amendment evinces an intent on the part of the legislature to repair at least a part of the situation which developed as a consequence of the decision in *State v. Farren*. But it does not indicate legislative intention to eliminate the full import of that decision. You will note in the statement of the facts in the *Farren* case that Farren was carrying his driver's license in his automobile when he was arrested and that he *refused* to show it to the officers. It is such refusal that is constituted a misdemeanor by the amended Section 6296-14 (b).

But the penalty for failing to establish satisfactory evidence that one is licensed when the license is not on or about the person and accessible for display on proper demand remains the same, that is, the establishment of a presumption that one has not obtained a license.

Section 4507.35, Revised Code, which is quoted in your letter, fails to maintain this distinction as clearly as it appeared in amended Section 6296-14 (b). Section 4507.35, Revised Code, might possibly be interpreted differently except for the fact that it is a mere recodification of the prior law, and not a new enactment; and in cases of ambiguity a provision in the Revised Code is properly given the interpretation accorded its predecessor General Code provision. See Section 1.24, R. C.

A defendant charged with a violation of this section should be given the opportunity to show (1) that he has a license and (2) that his failure to display it at time of arrest was not the result of deliberate refusal.

It is my opinion, and you are advised, that under the terms of Section 4507.35, Revised Code, when a demand is properly made upon the operator of a motor vehicle or a chauffeur that he display his license or furnish satisfactory evidence that he has such license, such operator or chauffeur is guilty of a misdemeanor if he has his license on or about his person and refuses to display it, but such operator or chauffeur is

not guilty of an offense under such section if he fails to display his license by reason of the fact that such license is not on or about his person and accessible for display.

Respectfully,

C. WILLIAM O'NEILL

Attorney General