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FILE NO. S-841

CRIMINAL LAW:

Sentencing - Section 6-303,
ch. 95 1/2 is Properly Classified
as a Class A Misdemeanor Under the
Unified Code of Corrections.

Honorable John G. Satter, Jr.
State's Attorney, Livingston County
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Pontiac, Illinois 61764

Dear Mr. Satter:

I have before me your letter wherein you state:

"Prior to January 1, 1973 Chapter 95 1/2, Section 6-303 of the Illinois Revised Statutes provided a penalty of imprisonment for not less than seven days nor more than one year and the imposition of a fine in addition thereto of not more than \$1,000.00. Upon the adoption of the Unified Code of Corrections this Statute among others was amended to classify the offense. As so amended the offense of driving while a license is suspended or revoked is a Class A Misdemeanor and the offender 'shall be imprisoned for not less than seven days'.

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* * * Section 6-303 (has been interpreted) to require the imposition of a seven day jail sentence only if imprisonment is the sentence selected. * * * (It has been argued) that if the sentence is for probation, conditional discharge, periodic imprisonment, or a fine the minimum period of seven days is not applicable. It is our position that the legislative decision in using the mandatory language 'and shall be imprisoned for not less than seven days' is a clear indication that this offense is to be treated more seriously than other Class A Misdemeanors. The imposition of a mere fine, or of probation or conditional discharge, divests the Statute of its intended severity. It also necessarily leads to the incongruous result of allowing the imposition of a \$10.00 or a \$1.00 fine and yet if (a) Court imposes imprisonment it cannot impose a sentence of less than seven days.

* * *

In the absence of controlling case decisions your opinion on this matter would be of great help. Thank you for your consideration."

Section 6-303 of the Illinois Vehicle Code (Ill. Rev. Stat. 1973, ch. 95 1/2, par. 6-303) reads as follows:

"(a) Any person who drives a motor vehicle on any highway of this State at a time when his drivers license or permit or privilege so to do or his privilege to obtain a license or permit under this Act is revoked or suspended as provided by this Act or any other Act, except as may be allowed by a restricted driving permit issued under this Act, shall be guilty of

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a Class A misdemeanor and shall be imprisoned for not less than 7 days." (Emphasis added.)

The sentencing provisions for those convicted of a Class A misdemeanor under the Unified Code of Corrections are clearly outlined by statute. Section 5-8-3 of the Unified Code of Corrections (Ill. Rev. Stat. 1973, ch. 38, par. 1005-8-3) reads:

"(a) A sentence of imprisonment for a misdemeanor shall be for a determinate term according to the following limitations:

(1) for a Class A misdemeanor, for any term less than one year; * * *

Section 5-9-1 of the Unified Code of Corrections (Ill. Rev. Stat. 1973, ch. 38, par. 1005-9-1) states:

"(a) An offender may be sentenced to pay a fine which shall not exceed for each offense:

* * * (2) for a Class A misdemeanor, \$1,000; * * *

The apparent intention of the legislature was to codify the penalty that existed for the same offense under the old Criminal Code by casting it into the new nomenclature of the Unified Code of Corrections. The addition of the language "and shall be imprisoned for not less than 7 days" merely provides for a minimum term period of imprisonment in order to conform with the old law. This particular change is one of

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terminology, relating the specific offense to a broad category of classification and is not substantive in terms of legislative intent.

It is a cardinal rule of construction that a statute should be construed so as to ascertain and give effect to the intention of the General Assembly expressed in the statute.

(Board of Education of Williamsville Community Unit School District No. 15 v. Brittin, 143 N.E. 2d 555, 11 Ill. 2d 411 (1957).)

A statute, the language of which clearly expresses the legislative intent must be construed to give effect to such intent. If more than one construction is possible in ascertaining the intent, one may consider the consequences of a particular construction and should avoid the one which causes objectionable consequences.

City of Nameoki v. Granite City, 408 Ill. 33, 95 N.E. 2d 920 (1951).

My predecessor ruled (1962 Op. Atty. Gen., 410) that persons convicted of driving while their operator's license is revoked or suspended, if otherwise qualified may be given probation at the discretion of the court; confinement in jail, upon conviction is not necessary. While that opinion was rendered in reference to section 6-303 (Ill. Rev. Stat. 1961, ch. 95 1/2,

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par. 144), it is my belief that its analysis remains equally compelling under sections 5-5-3, 5-6-1, 5-6-2, and 5-6-3 of the Unified Code of Corrections. Ill. Rev. Stat. 1973, ch. 38, pars. 1005-5-3, 1005-6-1, 1005-6-2, 1005-6-3.

Section 6-303 of the Illinois Vehicle Law of 1957 (Ill. Rev. Stat. 1961, ch. 95 1/2, par. 6-303) stated in part:

"(a) Any person who drives a motor vehicle on any highway of this State at a time when his operator's or chauffeur's license or permit or privilege so to do or his privilege to obtain a license or permit under this Act is revoked or suspended as provided by this Act or any other Act, except as may be allowed by a restricted driving permit issued under this Act, shall be punished by imprisonment for not less than 7 days nor more than 1 year and there may be imposed in addition thereto a fine of not more than \$1,000."

Section 47 of "AN ACT in relation to the regulation of traffic" (Ill. Rev. Stat. 1961, ch. 95 1/2, par. 144) stated in relevant part:

"(c) Every person who is convicted of a violation of this section shall be punished by imprisonment for not less than 2 days nor more than 1 year, or by fine of not less than \$100 nor more than \$1000 or by both such fine and imprisonment. On a second or subsequent conviction he shall be punished by imprisonment for not less than 90 days nor more than 1 year, and, in the discretion of the court, a fine of not more than \$1000."

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Section 7-1 of the Criminal Code of 1961 (Ill. Rev. Stat. 1961, ch. 38, par. 117-1) provided:

"§ 117-1. Admission to Probation.

(a) A person who has been found guilty of any offense except a capital offense, the sale of narcotics or rape may be admitted to probation when it appears that:

(1) The defendant is not likely to commit another offense;

(2) The public interest does not require that the defendant receive the penalty provided for the offense; and

(3) The rehabilitation of the defendant does not require that he receive the penalty provided for the offense.

(b) The term of probation may be for any period not less than 6 months and not to exceed 5 years. The court may for good cause extend the period of probation for not more than an additional 2 years.

(c) A person admitted to probation shall remain subject to the jurisdiction of the court.

(d) The judgment of guilty entered prior to the admission of defendant to probation shall be a final judgment subject to review under Article 121 of this Code. 1963, Aug. 14, Laws 1963, p. 2836, §117-1."

Section 7-2 of the Criminal Code of 1961 (Ill. Rev. Stat. 1961, ch. 38, par. 117-2) read as follows:

"§ 117-2. Conditions of Probation.

(a) A person admitted to probation shall be subject to the following conditions:

(1) Not violate any penal statute or ordinance of any jurisdiction.

(2) Not leave the State without the consent of the court.

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(3) Make a report to such person or agency and at such times as the court may direct and shall appear in person before the court at such time as the court may direct.

(4) Execute a recognizance in accordance with the provisions of Article 110 of this Code.

(b) A person admitted to probation may be subject to the following conditions:

(1) Imprisoned in a place of confinement other than a penitentiary for a period not to exceed one year and in no event to exceed the maximum penalty provided for the offense.

(2) Pay within a period set by the court a fine not to exceed the maximum provided for the offense.

(3) Pay the cost of the proceedings as set by the court.

(4) Make restitution or reparation within the period of probation in an amount not to exceed actual loss or damage to property or medical expense resulting from bodily injury to person.

(5) Perform or refrain from performing such other acts as may be ordered by the court. 1963, Aug. 14, Laws 1963, p. 2836, §117-2."

Section 5-5-3 of the Unified Code of Corrections (Ill.

Rev. Stat. 1973, ch. 38, par. 1005-5-3), states in part:

"(d) When a defendant is convicted of a felony or misdemeanor, the court may sentence such defendant to:

(1) a period of probation or conditional discharge except in cases of murder, rape, armed robbery, violation of Sections 401(a), 402(a), 405(a) or 407 of the Illinois Controlled Substances Act or violation of Section 9 of the Cannabis Control Act;

* * * *

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This section reflects the position taken by Illinois courts since People v. Molz, 415 Ill. 183, that punishment through incarceration should not be demanded in all criminal cases and that judges should be permitted to individualize punishment to rehabilitate criminals and thereby to benefit society. (415 Ill. at 188.) While driving with a suspended license is clearly a serious offense, I must conclude that the courts of record in Illinois retain under the Unified Code of Corrections a discretionary authority to grant probation to convicted persons. In imposing a probationary period, courts may be guided by sections 5-6-1, 5-6-2, and 5-6-3 of the Unified Code of Corrections (Ill. Rev. Stat. 1973, ch. 38, pars. 1005-6-1, 1005-6-2, 1005-6-3) which state in part:

"§ 1005-6-1. Sentences of probation and of conditional discharge.

(a) The court shall impose a sentence of imprisonment upon an offender if, having regard to the nature and circumstance of the offense, and to the history, character and condition of the offender, the court is of the opinion that:

(1) his imprisonment is necessary for the protection of the public; or

(2) the offender is in need of correctional treatment that can most effectively be provided by a sentence to imprisonment; or

(3) probation or conditional discharge would deprecate seriousness of the offender's conduct and would be inconsistent with the ends of justice.

(b) The court may impose a sentence of conditional discharge for an offense if the court is of the opinion that neither a sentence of imprisonment nor of probation supervision is appropriate.

§ 1005-6-2. Incidents of probation and of conditional discharge.

(a) When an offender is sentenced to probation or conditional discharge, the court shall impose a period under paragraph (b) of this Section, and shall specify the conditions under Section 5-6-3.

(b) Unless terminated sooner as provided in paragraph (c) of this Section, the period of probation or conditional discharge shall be as follows:

- (1) for a felony, not to exceed 5 years;
- (2) for a misdemeanor, not to exceed 2 years;
- (3) for a petty offense, not to exceed one year.

Multiple terms of probation imposed at the same time shall run concurrently.

§ 1005-6-3. Conditions of probation and of conditional discharge.

(a) The conditions of probation and of conditional discharge shall be that the person:

- (1) not violate any criminal statute of any jurisdiction; and
- (2) make a report to and appear in person before such person or agency as directed by the court."

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It is clear from the above cited statutory scheme that the alternative construction of section 6-303 of the Illinois Vehicle Code (Ill. Rev. Stat. 1973, ch. 95 1/2, par. 6-303) tendered in your letter would vary the plain and manifest meaning of the language used in the statute. To say that the mere addition of the phrase "and shall be imprisoned for not less than seven days" means that, in terms of sentence, for section 6-303 offenses, all other forms of disposition (including fine, probation, condition discharge) are repealed, and that incarceration is mandatory, regardless of the circumstances attendant the sentencing determination, is to render the enactment mischievous. If such were allowed, the punishment for the commission of a Class A misdemeanor would mandate a disposition more serious and severe than most felony grade offenses. Where language employed admits of two constructions, one of which makes the enactment absurd, if not mischievous, while the other renders it reasonable and wholesome, the construction which leads to an absurd result should be avoided. Kloss v. Suburban Cook County Tuberculosis Sanitarium Dist., 404 Ill. 87, 88 N.E. 2d 89 (1949);

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People ex rel. Barrett v. Thillens, 400 Ill. 224, 79 N.E. 2d 609 (1948); In re Abell's Estate, 395 Ill. 337, 70 N.E. 2d 252 (1947).

Finally, in relation to your question concerning the applicability of the seven day limit to periodic imprisonment, it is my opinion that the intent of the legislature, in promulgating section 6-303 of the Code, was to require that where a trial judge imposed a period of incarceration, that such period be for not less than seven days. Periodic imprisonment is permitted by section 5-5-3 of the Unified Code of Corrections (Ill. Rev. Stat. 1973, ch. 38, par. 1005-5-3) in all cases where defendant has been convicted of a felony or misdemeanor. Unlike the other subparagraphs of the authorizing disposition section, the paragraph permitting periodic imprisonment does not require a judicial determination as to the convicted's character, the nature of the offense, or the likelihood of rehabilitation. It follows, therefore, that periodic imprisonment should be required to be of the same length as non-periodic imprisonment.

For the aforementioned reasons, I am of the opinion that a violation under section 6-303 of the Illinois Vehicle

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Code (Ill. Rev. Stat. 1973, ch. 95 1/2, par. 6-303) is to be treated as an ordinary Class A Misdemeanor under the Unified Code of Corrections for all purposes with the one exception being that if imprisonment is the actual sentence imposed, then such incarceration cannot be for a period of less than seven days.

Very truly yours,

A T T O R N E Y G E N E R A L