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FILE NO. S-1481

MOTOR VEHICLES:  
Imposition of Reinstatement Fee  
For Drivers' Licenses Which Have  
Been Suspended or Revoked

Honorable Alan J. Dixon  
Secretary of State  
Springfield, Illinois 62756

Dear Secretary Dixon:

I have your letter wherein you request my opinion on two questions which relate to the implementation of Public Act 81-462, effective January 1, 1980.

You inquire whether assessment of the fees provided by that Act against persons whose licenses were revoked or suspended prior to the effective date of the Act, but who became eligible for reinstatement of privileges after that date, would be unlawful or unconstitutional. In my opinion it would not.

You also ask whether the term of suspension or period of revocation includes that period of time subsequent

Honorable Alan J. Dixon - 2.

to the date of eligibility for reinstatement but prior to the payment of the fee. It is my opinion that the period of suspension as described in section 1-204 of The Illinois Vehicle Code may not be made contingent upon payment of the reinstatement fee but such payment is made a condition precedent to the issuance of a new license to an individual whose license has been revoked.

Public Act 81-462 amends section 6-118 of The Illinois Vehicle Code (Ill. Rev. Stat. 1977, ch. 95 1/2, par. 6-118) and provides in pertinent part:

" \* \* \*

Any person whose license or privilege to operate a motor vehicle in this State has been suspended or revoked pursuant to any provision of Chapter 6 or Section 11-501.1 of this Act shall in addition to any other fees required by this Act, pay a reinstatement fee as follows:

Suspension. . . . .	\$15
Revocation. . . . .	\$30

\* \* \* "

The application of the fee to persons seeking reinstatement of driving privileges at any time subsequent to the effective date of the Act, does not appear to raise any constitutional problems where the suspension or revocation occurred before that date.

The United States Supreme Court held in Bell v. Burson (1971), 402 U.S. 535, 539, that a license cannot be

Honorable Alan J. Dixon - 3.

suspended or revoked unless licensees are accorded procedural due process. The Court said:

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\* \* \*

\* \* \* Once licenses are issued, \* \* \* their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment. [Citations.] This is but an application of the general proposition that relevant constitutional restraints limit state power to terminate an entitlement whether the entitlement is denominated a 'right' or a 'privilege'. [Citations.]

\* \* \*

"

The questions you raise do not concern the revocation or suspension of a license. Public Act 81-462 merely modifies the requirements for reinstatement of the license. Although you raise the issue of whether the law is ex post facto, it is not because the prohibitions against the enactment of ex post facto laws (U.S. Const., art. I, §9; Ill. Const. 1970, art. I, §16) are limited to the criminal law. (Mahler v. Eby (1924), 264 U.S. 32, 39; Wei v. Robinson (7th Cir. 1957), 246 F.2d 739, 746; Steinmetz v. Bd. of Trustees (1978), 68 Ill. App. 3d 83, 86.) The revocation of a driver's license is not a consequence of a plea of guilty to a criminal violation of The Illinois Vehicle Code nor is it considered a part of the punishment for the offense. (People v. Kobylak

Honorable Alan J. Dixon - 4.

(1943), 383 Ill. 432, 435-36; People v. Smith (1972), 7 Ill. App. 3d 143, 145; People v. Jenkins (1970), 128 Ill. App. 2d 351, 354-55.) Therefore, the fee for reinstatement of a revoked driver's license, or of a suspended driver's license for that matter, cannot be considered additional punishment for a criminal violation and thus, is clearly not a violation of the ex post facto prohibitions.

The answer to your second question would vary depending on whether a suspension or revocation is involved. A suspension is required to be for a definite period by section 1-204 of The Illinois Vehicle Code (Ill. Rev. Stat. 1977, ch. 95 1/2, par. 1-204), which provides as follows:

"§ 1-204. Suspension of driver's license. The temporary withdrawal by formal action of the Secretary of a person's license or privilege to operate a motor vehicle on the public highways, for a period specifically designated by the Secretary." (Emphasis added.)

If the duration of the suspension could be extended by the failure to pay the reinstatement fee, then it would not meet the statutory requirement that it be "for a period specifically designated" by the Secretary of State. The requirement that a reinstatement fee be paid shifts the initiation of action for return of a driver's license from the Secretary of State to the driver. Nothing in The Illinois Vehicle Code compels the holder of a suspended license to take any

Honorable Alan J. Dixon - 5.

action to have his driver's license returned, e.g., pay the reinstatement fee. However, his failure to do so does not lengthen the term of the suspension. Of course, until he obtains his driver's license, he would violate section 6-112 of The Illinois Vehicle Code (Ill. Rev. Stat. 1977, ch. 95 1/2, par. 6-112) if he operated a vehicle on an Illinois highway without having a valid driver's license in his possession.

A revocation, unlike a suspension, is for an indefinite period (Ill. Rev. Stat. 1977, ch. 95 1/2, par. 1-176), although one whose license has been revoked may apply for a new license after the expiration of one year (Ill. Rev. Stat. 1977, ch. 95 1/2, par. 6-208, as amended by Public Act 81-462). Under section 6-208, however, the Secretary is not required to issue a new license:

"

\* \* \*

In either event, the Secretary of State shall not issue such license unless and until he is satisfied after investigation of such person that to grant the privilege of driving a motor vehicle on the highways will not endanger the public safety or welfare."

Therefore, regardless of how much time elapses, one whose license has been revoked and who has not obtained a new license, even if failure to pay the reinstatement fee is the only bar to the issuance of such license, may be prosecuted under section 6-303 of The Illinois Vehicle Code

Honorable Alan J. Dixon - 6.

(Ill. Rev. Stat. 1978 Supp., ch. 95 1/2, par. 6-303), which prohibits a person from operating a motor vehicle on a highway in this State while his license is revoked or suspended.

(Ill. Rev. Stat. 1978 Supp., ch. 95 1/2, par. 6-601(c)1).

Very truly yours,

A T T O R N E Y   G E N E R A L