

FILE

Subject *Procedure - Criminal*
Bail - Bonds

Copy to _____



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

March 4, 1974

Opinion No. 74- 75

Mr. Barry L. Arbuckle
Assistant District Attorney
Office of the District Attorney
18th Judicial District
Sedgwick County Courthouse
525 North Main
Wichita, Kansas 67203

Dear Mr. Arbuckle:

In your letter of October 10, 1973, you inquire whether the use of a bond forfeiture as a "conviction" in a proceeding to declare a defendant a habitual violator under the provisions of K.S.A. 1972 Supp. 8-286 constitutes a violation of the due process requirements of the Fourteenth Amendment to the U. S. Constitution. It should first be noted that since your inquiry in October, Section 286 has been amended; however, the changes were minor and do not affect the substance of the prior section. Accordingly, this opinion will be equally applicable to the section as it appears in the 1973 supplement.

In recent years the courts have had frequent occasion to consider the nature of the benefits bestowed by a driver's license and have reviewed and defined the procedures necessary to revoke or suspend such benefits. The Supreme Court of Kansas has stated, for example:

"[T]he right to operate a motor vehicle upon a public street or highway is not a natural or unrestrained right but a privilege which is subject to reasonable regulation under the police power of the state in the interest of the public's safety and welfare. (Lee v. State, 187 Kan. 566, 358 P.2d 765.) The driver's license is not a contract or a property right in the constitutional

Mr. Barry L. Arbuckle
March 4, 1974
Page 2

sense, and therefore its revocation does not constitute the taking of property. The privilege is granted to those who are qualified, who comply with reasonable police power requirements in the interest of public safety and welfare, and is withheld from those who do not." (Popp v. Motor Vehicle Department, 211 Kan. 763, 766.)

The United States Supreme Court has held, however, that a license issued to a motorist is not to be taken away by state action without the procedural due process required by the Fourteenth Amendment, and that relevant constitutional restraints limit state action to terminate an entitlement whether that entitlement is denominated a "right" or a "privilege." Bell v. Burson, 402 U.S. 539, 91 S.Ct. 1586, 29 L.Ed.2d 90.

Due process is said to require that "when a state seeks to terminate an interest such as that here involved, it must afford notice and opportunity for hearing appropriate to the nature of the case." Bell v. Burson, supra, at 542.

There seems to be no question that the procedure provided by K.S.A. 1973 Supp. 8-286 with regard to the revocation of a driver's license is consistent with the requirements of due process as set out in Bell. Both notice and hearing are provided as requirements under the statute. Thus, the only question presented is whether or not it is constitutionally acceptable to use a forfeiture of bail as a conviction in the proceeding as allowed by K.S.A. 8-253(c).

Apparently no other jurisdictions have yet had cause to consider this particular question. However, in construing a statute which provided for a suspension of a driver's license upon the accumulation of a certain number of "points" under a system where such points were charged against a driver's record for various traffic violations, the Supreme Court of Colorado passed upon the legality of a statute which provided that either a forfeiture of bail not vacated or the payment of a penalty assessment would be considered as a "conviction." In upholding the validity of such a statute, the Colorado Supreme Court stated:

"The Colorado statute provides that either a forfeiture of bail or the payment of a penalty assessment shall be considered a conviction. The statute does not violate any constitutionally protected right of the operator of a motor vehicle and is a valid legislative enactment. The penalty

Mr. Barry L. Arbuckle
March 4, 1974
Page 3

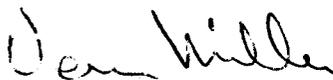
assessment statute does not deprive an offender accused of a traffic violation of his right to a trial. On the contrary, the statute not only expressly preserves the accused's right to a trial but also affords him an alternative procedure which he may accept or reject." (Cave v. Colorado Dept. of Revenue, 501 P.2d 479.)

In Pryor v. David (Mo.) 436 S.W.2d 3, the Supreme Court of Missouri considers a similar issue:

"Appellant contends that a bond forfeiture cannot be a conviction because it is neither a plea of guilty nor a verdict or finding of guilty by a court. We are not here called upon to determine whether a bond forfeiture is a conviction within the strict meaning of a conviction of a crime. We are concerned with a statute providing for revocation of driving licenses for violations of traffic laws. It is a traffic safety measure. Appellant's contention must be rejected for both by statute and decision Missouri has equated forfeiture of bail with conviction. . . . We agree with the Supreme Court of Virginia that a forfeiture of bail '...is as distinctly a conviction for the purpose of the revocation as a conviction on a plea of guilty or not guilty. No reason is found in the letter or the spirit of the statutes involved for construing them so as to provide for a violator of the [traffic] laws a door of escape from revocation of his license by the expedient of forfeiting his collateral instead of appearing to answer the charge.' Lamb v. Parsons, 195 Va. 353, 78 S.E.2d 707, 710."

Therefore, in view of the above considerations and arguments, it is the opinion of this office that the due process requirements of the Fourteenth Amendment to the U. S. Constitution are not violated by the use of a forfeiture of bail which has not been vacated, as a "conviction" for the purposes of K.S.A. 1973 Supp. 8-286.

Very truly yours,



VERN MILLER
Attorney General

VM:DLM:gh