



STATE OF KANSAS

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Attorney General

March 31, 1975

Opinion No. 75- 149

The Honorable Virgil W. Begesse
Doniphan County Judge
Doniphan County Courthouse
Troy, Kansas 66087

Dear Judge Begesse:

You inquire whether under K.S.A. 8-1567, the court is empowered to require surrender of the driver's license of a non-resident offender. K.S.A. 8-1567 prohibits driving while under the influence of intoxicating liquor or drugs. Upon conviction, under subsection (d), the court is directed

"to revoke the operator's or chauffeur's license or privilege to operate a motor vehicle on the public highways of this state of such person. Whenever a license or privilege to operate a motor vehicle is revoked pursuant to this section, the person whose license or privilege has been revoked shall not be entitled to have such license or privilege restored until the expiration of one (1) year [unless certain conditions are met.]

Upon revoking any license pursuant to this section, the court shall require that such license be surrendered to the court who shall transmit the same to the division [of motor vehicles] to be retained by the division until further order of the court." [Emphasis supplied.]

Under subsection (e), in lieu of revocation, the judge may enter an order restricting the offender" to operating a motor vehicle on the highways of this state" under specified conditions. Concerning surrender of the license in the instance of restriction rather than revocation, subsection (e) provides in its second paragraph thus:

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"Upon entering an order restricting a person's license hereunder, the judge shall require such person to surrender his operator's license to the judge who shall cause the same to be transmitted to the division of vehicles, together with a copy of the order. . . . If the person convicted pursuant to this section is a nonresident, the judge shall cause a copy of the order to be transmitted to the division who shall forward a copy thereof to the motor vehicle administrator of such person's state of residence. Said judge also shall furnish to any person whose operator's license is restricted hereunder a copy of the order, which shall be recognized as a valid Kansas operator's license until such time as the division shall issue the restricted license as provided herein."
[Emphasis supplied.]

Concerning revocation under (d) above, the court is authorized to revoke both a "license" to operate a motor vehicle on the highways of this state, and a "privilege" to do so. In K.S.A. 8-1430, the term "license to operate a motor vehicle" is defined to mean

"any driver's license or any other license or permit to operate a motor vehicle issued under, or granted by, the laws of this state, including:
(a) Any temporary license, or instruction permit;
(b) the privilege of any person to drive a motor vehicle whether or not such person holds a valid license; and
(c) any nonresident's operating privilege."
[Emphasis supplied.]

The underscored term is defined, in turn, by K.S.A. 8-1441, thus:

"'Nonresident's operating privilege' means the privilege conferred upon a nonresident by the

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laws of this state pertaining to the operation by such person of a motor vehicle, or the use of a vehicle owned by such person, in this state."

In subsection (d), the statute empowers the court to revoke either a "license" or a "privilege." It is a fundamental principle of law that the court of one state may not revoke the license to operate a motor vehicle issued under the laws of another state. The court of this state may revoke a nonresident's privilege to operate a motor vehicle on the highways of this state, but it may not revoke the license issued by another state. Only the proper authorities of that state may do so, under the laws provided for that purpose by that state. Subsection (d) provides that "[u]pon revoking any license pursuant to this section, the court shall require" that it be surrendered. In the case of a nonresident, the court may not revoke the license, but only the privilege to operate a motor vehicle on the highways of this state. In such an instance, it is our opinion that the court may not require the surrender of the license to operate a motor vehicle issued by another jurisdiction and held by a nonresident convicted by the court. Under reciprocal agreements with motor vehicle administrators of other states, of course, information regarding the conviction of a nonresident in this state may be forwarded to the appropriate authorities of such other state, for such action as is authorized by the laws of such other state. The court may not, however, itself exercise the power of revocation of an operator's license held by a nonresident and issued under the laws of another state, nor may the court, accordingly, require the surrender of such license.

Where, in lieu of revocation, the court imposes restrictions upon the license, subsection (e) as quoted above, authorizes the court to require a resident to surrender his license, for forwarding to the division of motor vehicles. In the case of conviction of a nonresident, and in which the court determines to impose restrictions, those restrictions extend not to the license itself, but to the privilege of the holder to operate a motor vehicle on the highways of this state. The second paragraph of subsection (e) does not direct the judge to require surrender of the license in the case of a nonresident, but only that the judge cause a copy of the order to be forwarded to the division of vehicles, which shall forward a copy thereof to the motor vehicle administrator

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of such person's state of residence, who may then take such action to impose such restrictions on the license as the laws of that state warrant and require.

Accordingly, in brief, it is our opinion that in the instance of a conviction of a nonresident of driving while under the influence of intoxicating liquor or drugs, that the court may revoke not the license of such nonresident, issued by the state of such person's residence, but only the privilege of that person as a nonresident to operate a motor vehicle on the highways of this state, and that in so doing, the court may not require surrender of the license of such nonresident. Where the judge chooses to impose restrictions in lieu of revocation, in the instance of a nonresident, once again, the court may not in our opinion require the surrender of said license, but shall forward a copy of its order imposing such restrictions upon the privilege of such nonresident to operate a motor vehicle upon the laws of this state to the division of motor vehicles, which in turn shall forward a copy thereof to the motor vehicle administrator of the state of said person's residence.

Yours very truly,


CURT T. SCHNEIDER
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