



**THE ATTORNEY GENERAL
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September 29, 1970

Hon. Robert W. Post
County Attorney
P. O. Box 110
Cuero, Texas 77954

Opinion No: M-697

Re: Whether a minor defendant convicted under Art. 802e, Vernon's Penal Code, automatically has his operator's license suspended under the provisions of Sec. 24(a)(2), Art. 6687b, Vernon's Civil Statutes?

Dear Mr. Post:

You have recently asked an opinion of this office concerning Article 802e, Vernon's Penal Code. Re-phrased, your question is as follows:

"A minor defendant was tried under Art. 802e of the Texas Penal Code. It was the interpretation by the County Judge and the County Attorney that the minor could retain his driver's license by provisions of Art. 802e. However, the Texas Department of Public Safety has issued a letter asking for suspension of the minor's operator's license.

"Is an automatic suspension required under Art. 802e or is the interpretation reached by the then County Attorney correct?"

The pertinent parts of Article 802e read as follows:

"Sec. 1. Any male minor who has passed his 14th birthday but has not reached his 17th birthday, and any female minor who has not reached her 18th birthday, and who drives or operates an automobile or any other motor vehicle on any public road or highway in this state or upon any street or alley within the limits

of any city, town or village, or upon any beach as defined in Chapter 430, Acts of the 51st Legislature, 1949, while under the influence of intoxicating liquor, or who drives or operates an automobile or any other motor vehicle in such a way as to violate any traffic law of this state, shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Hundred Dollars (\$100.00)...."

"Sec. 2. No such minor, after conviction or plea of guilty and imposition of fine, shall be committed to any jail in default of payment of the fine imposed, but the court imposing such fine shall have power to suspend and take possession of such minor's driving license and retain the same until such fine has been paid." (Emphasis Added)

According to Section 24(a)(2), Article 6687b, Vernon's Civil Statutes, as last amended, the operator's license of any individual is suspended for 12 months automatically upon final conviction for the criminal offense of driving while intoxicated. Gilbert v. State, 212 S.W.2d 182 (Tex. Crim., 1948). This section makes no distinction as to the particular article of the penal code under which the final conviction supporting the suspension must be had, nor does it limit, expressly or impliedly, the class of persons subject to the suspension. Attorney General Opinion No. V-1266 (1961). Significantly, the offense of driving while intoxicated is prescribed by both Article 802 and Article 802e of the Penal Code.

Where the language of a statute is ambiguous, the provisions thereof, may be interpreted by resort to two primary rules of construction: First, the legislative history, and secondly, the scheme or intent of the legislation as made manifest by the similar subject matter sought to be controlled or regulated. Barnes v. State, 170 S.W. 548 (Tex. Crim., 1941); Duval Corp. v. State, 407 S.W.2d 493 (1966).

Statutes dealing with the same general subject or relating to the same matters may be considered as statutes in pari materia, although they are passed at different times

or different sessions of the legislature. Duval v. State, supra. The goal of interpretation in utilizing this maxim is to carry out the full legislative intent by giving effect to all laws and provisions bearing upon the same subject. Trinity Universal Ins, Co. v. McLaughlin, 373 S.W.2d 66, (Tex. Civ.App., 1963 error ref. n.r.e.). Although Article 802e is a specific statute relating to the offense of a minor driving while intoxicated, and independent of the general civil provisions of Article 6687b, Section 24(a)(2), general and special statutes should be read together and harmonized if possible, to secure the general purpose and scope of legislation on that same subject matter. Halsell v. Texas Water Commission, 380 S.W.2d 1, (Tex.Civ.App., 1964, error ref. n.r.e.)

In reviewing the legislative history of Article 6687b, Article 802, and Article 802e, we find that the object and purpose of these statutes has been a series of repeated enactments by the legislature of more stringent statutes to provide safer highway travel in the face of an increasing number of accidents by individuals who drive while intoxicated. Attorney General Opinion M-673. Prior to passage of Article 802e, and its predecessor Article 802d, male juveniles under seventeen years of age were not subject to punishment for crimes but were subject only to the provisions of Article 2338-1, Vernon's Civil Statutes, which established juvenile courts and provided for trial procedure in juvenile delinquency cases. The predecessor of Article 802e, Article 802d, provided for automatic suspension of a minor's driver's license when the minor received final conviction. Attorney General Opinion V-1266 (1951).

Continuing the same legislative scheme, Article 802e provides for certain procedures which may be utilized by the judge after conviction, where the minor fails to pay the fine imposed by the court. Although the civil sanctions of Article 6687b for driving while intoxicated are generally separate and independent of the criminal penalties prescribed by Articles 802 and 802e, in our opinion by their relation to the same subject matter, these statutes are to be construed in pari materia. Cognizant of the legislative history of these statutes, we view the quoted emphasized language in Section 2, Article 802e, as granting power to the judge to suspend the operator's license under certain limited circumstances, and not as words restricting the automatic suspension under Section 24(a)(2), Article 6687b.

In the following circumstances, for example, the judge

may suspend and take possession of the minor's driving license although suspension of his license also is automatic upon final conviction: First, where the minor refuses to pay the fine imposed upon conviction by the court, the judge may insure that the minor shall not ostensibly drive lawfully by suspending and taking possession of his license prior to the time the Texas Department of Public Safety requests the minor to physically surrender and deliver his operator's license. Secondly, where the minor continues to refuse payment of the fine after an automatic suspension resulting from final conviction expires, the judge may therefore suspend and take possession of the minor's driving license until the fine is paid. Other circumstances also may arise to invoke the power of the judge provided by Section 2 of Article 802e.

We find no basis in reason or legislative history for any contention that the language of Section 2, Article 802e was intended by implication to restrict automatic suspension of a minor's driving license where the conviction is final. No evidence exists that the legislature intended to allow the judge to thwart the separate and independent civil penalties imposed by Section 24(a)(2), Article 6687b, where a minor is found guilty and receives final conviction. Any contrary holding to allow automatic suspension would be tantamount to nullifying what we view as legislative intent to maintain stringent regulations for highway travel by those who drive while intoxicated, and would give rise to unequal treatment of drinking drivers based upon classification of age. Furthermore, such holding would negate the effect of Article 802e and lead to an absurd conclusion in light of the legislative history, object and purpose of these statutes in pari materia. The legislature must be presumed not to have done a useless, absurd or futile act. Brown v. Memorial Village Water Authority, 361 S.W.2d 453 (Tex.Civ.App., 1962, error ref. n.r.e.); State ex rel Childress v. Shelby County, 150 Tex. 238, 239 S.W.2d 777 (1951); Trimmer v. Carlton, 116 Tex. 572, 296 S.W. 1070 (1927).

It is, therefore, the opinion of this office that Section 24(a)(2), Article 6687b, Vernon's Civil Statutes, operates to automatically suspend a minor's driving license when the minor receives a final conviction for driving while intoxicated under Article 802e, Vernon's Penal Code.

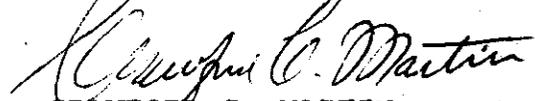
SUMMARY

Section 24(a)(2), Article 6687b, Vernon's Civil Statutes, operates to automatically suspend a minor's driving license

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when the minor receives final conviction for driving while intoxicated under Article 802e, Vernon's Penal Code.

Yours very truly,



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