



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable J. B. Draper
Chief Driver's License Division
Texas Department of Public Safety
Camp Mabry
Austin, Texas

Dear Sir:

Opinion No. O-5466

Re: Is the term "Driver's License" to be interpreted as "Driver's Privilege" under the provisions of Section 24 (a) Article 6687b, Revised Civil Statutes with reference to suspension of licenses, and if a person does not have a license at the time of conviction, can the Department deny him a license during the period of his suspension.

Your three letters of request for Opinion of this Department dated July 20, 1943, have been received in which you seek an opinion on each of the following questions:

Question No. 1. Does Section 24 (a) of Article 6687 (b) mean that the person's driving privilege in this state shall be suspended, when such person has never been issued a license?

Question No. 2. Does the Department of Public Safety have authority to suspend a driving privilege, or can such proceedings be instituted only when the violator is at the time the holder of a valid license, and the operator has been guilty of one or more offenses listed under Section 22 of Article 6687b of the statutes?

Question No. 3. If a person is convicted of any

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of the offenses for which suspension is mandatory under Section 24 of Article 6687b, Vernon's Annotated Revised Civil Statutes, but such person does not have a license at the time of conviction, does the Department of Public Safety have authority to deny him a license during the period of his suspension?

It is basic that a person has no driving privilege in this state until a license has been issued to him. An official license may be said to be a permission granted by public authority to perform certain acts which are forbidden by law except to persons obtaining such permission. *Hoefling v. City of San Antonio*, 85 Tex. 228, 20 S. W. 85, 16 L. R. A. 608. The term "license" may be used to designate the permission itself. There can be no suspension proceedings instituted to suspend a driving privilege which is not existent by reason of the fact that the person has not been issued a driver's license. Therefore, we answer your first two questions in the negative.

Section 4, Subsection 9, and Section 10 of Article 6687b, Vernon's Annotated Revised Civil Statutes, respectively read as follows:

"Section 4. The Department shall not issue any license hereunder:

. . .

"9. To any person when the Department has good cause to believe that the operation of a motor vehicle on the highways by such person would be inimical to public safety or welfare."

"Section 10. The Department shall examine every applicant for an operator's, commercial operator's, or chauffeur's license, except as otherwise provided in this Section. Such examination shall be held in the county where the applicant resides or makes application within not more than ten (10) days from the date the application is made. It shall include a test of the applicant's vision, his ability to understand highway signs in the English language regulating, warning, and directing traffic, his knowledge of the traffic laws of this State, and shall include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor

vehicle and such further physical and mental examination as the Department finds necessary to determine the applicant's fitness to operate a motor vehicle safely upon the highways, and provided further that the Director shall have the authority to cause to be re-examined licensees in any case which in his judgment the licensee is incapable of operating a motor vehicle, said examination shall be held in the county of the licensee's residence unless otherwise agreed to by both parties to be held elsewhere."

In deciding the issue of the applicant's fitness to operate a motor vehicle and whether or not the operation of a motor vehicle by the applicant would be inimical to public safety or welfare, the Department should take into consideration the fact that such person has been guilty of an offense for which suspension of a driver's license is mandatory under Section 24, Article 6627b, Vernon's Annotated Revised Civil Statutes, or any other offense under the laws regulating the operation of motor vehicles, and should deny the issuance of any license if, in the opinion of the Department, it "would be inimical to public safety or welfare" for the applicant to have any license.

Very truly yours,

APPROVED JUL 29, 1943

ATTORNEY GENERAL OF TEXAS

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ASSISTANT
ATTORNEY GENERAL

By

[Handwritten signature]
EUGENE F. CATLETT
Assistant

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