



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

GROVER SELLERS
~~XXXXXXXXXXXXXX~~
ATTORNEY GENERAL

Honorable Jouette Bonner
County Attorney
Jack County
Jacksboro, Texas

Dear Sir:

Opinion No. 0-6647

Re: Suspension of driving privileges of a discharged serviceman who has been convicted of driving while intoxicated during the period of his exemption from the requirement of a drivers' license as provided for in Senate Bill 109, 49th Legislature.

We have received your letter of August 28, 1945, wherein you request an opinion of this department with respect to the following facts in substance:

An honorably discharged serviceman, who is exempt from the requirement of a drivers' license for a period of six months after discharge by virtue of Senate Bill 109, 49th Legislature, has been convicted of the offense of driving while intoxicated. Said conviction automatically suspends a person's drivers' license under the Texas Drivers' License Law. You then ask this question: "Does the conviction prevent them driving for six months from the sentence, or, when they apply for a license will they be denied the license for six months or issued the license and then it cancelled for six months?"

By Acts 1945, 49th Legislature, R. S., ch. 41 page 59, the Legislature amended Chapter 173, Article II, Section 3, Acts of the 47th Legislature, 1941, "Drivers' License Law", by adding subsection 6, which reads as follows:

"Sec. 3. What persons are exempt from license.

"The following persons are exempt from license hereunder:

"6. Any person in the armed forces of the United States who is on leave or furlough or may be temporarily absent from his

or her post of duty, or who has been honorably discharged from the armed forces of the United States of America for not more than six (6) months. . . ."

Section 24, Art. 4, of the aforementioned Chapter 173, provides for the automatic suspension of the drivers' license upon conviction of any of several offenses, among which is "2. Driving a motor vehicle while under the influence of intoxicating liquor or narcotic drugs." This section further reads that the suspension above provided for shall be in the first instance a period of six (6) months. We wish to particularly point out that this section of the statute provides for the automatic suspension of the "license" of the driver convicted of driving while intoxicated. Obviously, where there is no license, none may be automatically suspended, which is the case here. Therefore, we answer each part of your question in the negative.

In an opinion of this department dated July 29, 1943, to the Honorable J. B. Draper, Chief, Drivers' License Division, Department of Public Safety of the State of Texas, it was held that when a person has never been issued a license his driving privilege cannot be suspended under the said section 24. We quote the following language therefrom:

"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. Hoetling vs. 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 proceeding instituted to suspend a driving privilege which is not existent by reason of the fact that the person has not been issued a drivers' license."

Any action taken in this case by the Department of Public Safety, should this serviceman apply for a license at the termination of his exemption period, may be that as taken in the case of an ordinary application for license under Article II of the Drivers' License Law entitled 'Issuance of license, Expiration, and Renewal.'

APPROVED SEP. 20, 1945
s/ Carlos C. Ashley
FIRST ASSISTANT
ATTORNEY GENERAL

Yours very truly
ATTORNEY GENERAL OF TEXAS
s/ Eugene Alvis
By

Eugene Alvis

s/ Jack K. Ayer

By Jack K. Ayer

JKA:zd/cg

Approved Opinion Committee By BWB, Chairman