



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

overrules 0-6052

**WILL WILSON
ATTORNEY GENERAL**

March 9, 1959

Honorable Jack Ross, Chairman
Board of Pardons and Paroles
Capitol Building
Austin, Texas

Opinion No. WW 567

Re: Restoration of the
license of a person to
drive a motor vehicle
upon the public roads,
highways, and streets
of the State of Texas
after final conviction
for a penal offense
which carries an auto-
matic suspension of
such license.

Dear Mr. Ross:

From your letter of June 10, 1958, requesting an official opinion of this office concerning the above subject, we quote:

'In view of the 1936 amendment to Article 4, Section 11 of the Texas Constitution, opinions of former Attorney Generals and the recent decision of the Court of Criminal Appeals in Cause No. 29,506 entitled Chester Lee Davison, Appellant vs. The State of Texas, Appellee, 313 S. W. 2d 883, this Board respectfully requests your opinion on the following:

"Does the Board of Pardons and Paroles have the power to recommend and the Governor to grant the restoration of a license to drive a motor vehicle upon the public roads, highways and streets of the State of Texas after final conviction of a penal offense which, under the laws of the State of Texas, carries an automatic suspension of such license?"

Article 4, Section 11, as amended November 3, 1936, of the Constitution of the State of Texas, creates the Board of Pardons and Paroles and sets forth its duties and provides in part as follows:

"In all criminal cases, except treason and impeachment, the Governor shall have the power, after conviction, on the written, signed recommendation and advice of the Board of Pardons and Paroles, or of a majority thereof, to grant reprieves and commutations of punishment and pardons; and under such rules as the legislature may prescribe, and upon the written recommendation and advice of the majority of the Board of Pardons and Paroles he shall have the power to remit fines and forfeitures. . . ."

In an oral discussion with you, you advised that the "Opinions of Former Attorney Generals" to which you refer in your opinion request consist of Attorney General Opinion No. O-6052.

Attorney General Opinion No. O-6052 (1944) held that under the Constitution and laws of Texas the Governor, upon the favorable recommendation of the Board of Pardons and Paroles, has the power to restore the right to operate a motor vehicle upon the public highways to a person who has been convicted of driving while intoxicated and who has served his jail sentence or paid his fine, or both, after final conviction. Such opinion held that the automatic suspension of a driver's license of one convicted for the offense of "driving a motor vehicle while under the influence of intoxicating liquor" is contemporaneous with the conviction under the Penal Statute (Article 802, Vernon's Penal Code) and is an inexorable part and parcel of the penalty imposed. This opinion stated that such suspension of the driver's license was a "forfeiture" by way of punishment after conviction in a criminal case, i.e., driving a motor vehicle while under the influence of intoxicating liquor, and as a consequence, is an incident of the punishment described by Article 802 of the Texas Penal Code.

One who has been convicted of the penal offense of driving while intoxicated, as set forth in Article 802 of the Texas Penal Code, suffers the automatic suspension of his driver's license under the provisions of Section 24, Article 6687b, Vernon's Civil Statutes. The pertinent language within Section 24 of Article 6687b, Vernon's Civil Statutes, with which we are here concerned, provides as follows:

- "a. The license of any person shall be automatically suspended upon final conviction of any of the following offenses:

2. . . . driving a motor vehicle while under the influence of intoxicating liquor or narcotic drug.

"b. The suspension above provided for shall in the first instance be for a period of six months. In the event any license shall be suspended under the provision of this section for a second time, said suspension shall be for a period of one year."

In the case of Chester Lee Davidson v. The State of Texas, supra, by the Court of Criminal Appeals, said court speaking through the Honorable W. A. Morrison, Presiding Judge, stated that "the right to drive is a 'privilege' and not a right," and in support of same cited the cases of Gillaspie v. Department of Public Safety, 259 S. W. 2d 177; Tatum v. Department of Public Safety, 241 S. W. 2d 167, and numerous other cases. Likewise, in said opinion Presiding Judge Morrison further stated that the suspension of a driver's license is not a part of the punishment prescribed by the legislature but was an ancillary result of the conviction.

We have made a thorough search of those cases in which a driver's license has been "suspended" in accordance with Section 24 of Article 6687b, Vernon's Civil Statutes, and we can find no case in which the courts have referred to such "suspension" as a "forfeiture." Indeed, the courts of Texas have uniformly adhered to the wording of the statute itself and used the verb "suspend" when invoking the provisions of Section 24 of Article 6687b, Vernon's Civil Statutes. To "suspend" merely means a temporary stop for a time. In re Trans-Tex Oil Corp., 85 Fed. Supp. 299, 300 (N. D., Tex.) a "forfeiture" occurs where a person loses some right, property, privilege or benefit in consequence of having done or omitted to do a certain act. State v. Compton, 142 Tex. 494; 179 S. W. 2d 501, (Sup. Ct. of Tex., 1944.) "To suspend" is to end or terminate, though ordinarily temporarily or subject to reinstatement, while "to forfeit" is in effect to end or terminate, ordinarily permanently. James v. Metropolitan Life Ins. Co., 73 N. E. (2d) 140. (Emphasis our's)

Accordingly, we are unable to adhere to Attorney General's Opinion No. 0-6052 which holds that the suspension of a license of one convicted under Article 802, Vernon's Penal Code, is a "forfeiture" and hereby overrule said opinion.

Honorable Jack Ross, Page 4 (WW 567).

Inasmuch as the Court of Criminal Appeals in the Davidson case saw fit to declare that the suspension of a driver's license as provided for in Section 24 of Article 6687b was not a part of the punishment imposed by Article 802 of the Texas Penal Code and a "suspension" is not referred to in Article 4, Section 11 of the Constitution of Texas, supra, you are advised that the Board of Pardons and Paroles does not have the power to recommend, and the governor does not have the power to grant restoration of a license to drive a motor vehicle upon the public roads, highways and streets of the State of Texas after final conviction of the penal offense which under the laws of the State of Texas carries an automatic suspension of such license.

SUMMARY

The Board of Pardons and Paroles does not have the power to recommend, and the governor does not have the power to grant restoration of a license to drive a motor vehicle upon the public roads, highways and streets of the State of Texas after final conviction of a penal offense which under the laws of the State of Texas carries an automatic suspension of such license.

Yours very truly,

WILL WILSON
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By 
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APPROVED:

OPINION COMMITTEE

George P. Blackburn, Chairman

Jack Goodman
William E. Allen
C. Dean Davis

REVIEWED FOR THE ATTORNEY GENERAL

BY: W. V. Geppert