



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

February 25, 1966

WAGGONER CARR
ATTORNEY GENERAL

Honorable Don Hall
Criminal District Attorney
Waco, Texas

Opinion No. C- 626

Re: Suspension of driver's
license of defendants after
being convicted of the mis-
demeanor offense of DWI or
the felony offense of DWI
second offense and being
placed on probation.

Dear Mr. Hall

In a recent opinion request of this office you posed
the following question:

"Whether a person pleading guilty to
DWI 2nd offense, under the new Code
of Criminal Procedure, and receiving
a probated sentence will automatically
lose his driver's license."

In addition, in your opinion request you set out the
following paragraph:

"We would in particular appreciate this
opinion to consider the question in
misdemeanor DWI pleas in which, it is
our understanding, that a plea of guilty
resulting in probation does not require
automatic loss of driving privileges."

This opinion will, therefore, not only consider whether
or not a person automatically loses his driver's license after
pleading guilty to driving while intoxicated, second offense,
and is placed on probation, but will also pertain to possible
loss of driving privileges when a person pleads guilty to
the misdemeanor offense of driving while intoxicated and is
placed on probation.

Article 6687b, Section 24(a), Vernon's Civil Statutes,
provides as follows:

"The license of any person shall be auto-
matically suspended upon final conviction
of any of the following offenses:

". . .

"2. Driving a motor vehicle while under the influence of intoxicating liquor or narcotic drugs;"

Article 6687b, Section 25 (c), second paragraph states as follows:

"Provided, however, that in case of conviction for any of the offenses enumerated in paragraph (a) of Section 24 of this Act, and the sentence of the court having been suspended as provided in the Statutes, such suspended sentence shall not mitigate against the suspension of the operator's, commercial operator's, or chauffer's license of the person convicted."

It seems clear that the legislature has evidenced its intent that a person finally convicted of the offense of driving while intoxicated shall lose his driving privileges even though as a result of said conviction his sentence is suspended.

Article 54.02, Vernon's Code of Criminal Procedure, 1966, expressly repeals Articles 766 through 781, Vernon's Code of Criminal Procedure, 1925, which authorized suspended sentences in Texas. Therefore, Texas no longer has what was commonly referred to as a suspended sentence. However, Article 42.12, Vernon's Code of Criminal Procedure, 1966, commonly referred to as the Adult Probation and Parole Law, authorizes, under certain circumstances, the suspension of sentence and placing on probation of a defendant convicted of a felony. Article 42.12A, Section 1 (b), defines "probation" as follows:

"'Probation' shall mean the release of a convicted defendant by a court under conditions imposed by the court for a specified period during which the imposition of sentence is suspended."

Article 42.12B, Section 3, provides as follows:

"The judges of the courts of the State of Texas having original jurisdiction of criminal actions, when it shall appear to

the satisfaction of the court that the ends of justice and the best interests of the public as well as the defendant will be subserved thereby, shall have the power, after conviction or a plea of guilty for any crime or offense, where the maximum punishment assessed against the defendant does not exceed ten years imprisonment, to suspend the imposition of the sentence, and may place the defendant on probation or impose a fine applicable to the offense committed and also place the defendant on probation as hereinafter provided. Any such person placed on probation, whether in a trial by jury or before the court, shall be under the supervision of such court."

It is thus seen that although we no longer have in Texas a suspended sentence law, Article 42.12, which authorizes the granting of probation under certain circumstances speaks in terms of the sentence being suspended when a defendant is placed on probation. It is the opinion of this office, therefore, that when a person is convicted of the felony offense of driving while intoxicated, second offense, and placed on probation in accordance with the terms of Article 42.12, Article 6687b, Section 25 (c), second paragraph requires that his driver's license shall be suspended, and he shall lose his driving privileges in accordance with the terms of said article.

This office is not unmindful that it can be argued that Article 42.12, applies to misdemeanor convictions as well as felony convictions. Said Article makes no distinction between felonies and misdemeanors but rather, as seen by Section 3, simply states that the judges of the courts of Texas may grant probation under certain conditions after conviction or on a plea of guilty for any crime or offense where the maximum punishment assessed against the defendant does not exceed ten years imprisonment. Standing alone this language could be construed as meaning that the legislature intended for Article 42.12, to apply to misdemeanors as well as felonies. However, since the legislature enacted Article 42.13, Vernon's Code of Criminal Procedure, 1966, designated as the Misdemeanor Probation Law, it is the opinion of this office that the legislature has evidenced its intent by the enactment of said special statute that the granting of misdemeanor probations is to be governed by Article 42.13,

rather than Article 42.12. It is our opinion, therefore, that whether a person loses his driver's license after being placed on probation after conviction of the misdemeanor offense of driving while intoxicated depends upon the construction of Article 42.13, in conjunction with Article 6687b, rather than upon the reasoning above set out with regard to a conviction for the felony offense of driving while intoxicated, second offense.

Prior to January 1, 1966, there was no sentence in a misdemeanor case in Texas. Nor was there available after a misdemeanor conviction a suspended sentence or a probated sentence. However, Article 42.02, Vernon's Code of Criminal Procedure, 1966, states as follows:

"A 'sentence' is the order of the court in a felony or a misdemeanor case made in the presence of the defendant, except in misdemeanor cases where maximum possible punishment is by fine only, and entered of record, pronouncing the judgment and ordering the same to be carried into execution in the manner prescribed by law."

It is thus seen that there is now a sentence in misdemeanor cases in Texas, except where the maximum possible punishment is by fine only, and if a person convicted of the misdemeanor offense of driving while intoxicated were placed on probation and his sentence suspended in accordance with Article 42.12, then the above set out reasoning with regard to driving while intoxicated felony offenses would apply. However, as stated previously, it is our opinion that Article 42.13, the Misdemeanor Probation Law, governs the granting of probation in misdemeanor cases. Therefore, we must look to the terms of said Article to determine whether a person convicted of the misdemeanor offense of driving while intoxicated automatically loses his driver's license upon conviction and being placed on probation for said offense.

Article 42.13, makes no reference to the suspension of sentence in connection with placing a defendant on probation in a misdemeanor case. Rather, Section 4 (a) of said Article states as follows:

"When a defendant is granted probation under the terms of this Act, the finding of guilt does not become final, nor may the court render judgment thereon, except as provided in Section 6 of this Article."

Article 42.13, Section 6, is as follows:

"(a) If a probationer violates any term of his probation, the court may cause his arrest by warrant as in other cases. The probationer upon arrest shall be brought promptly before the court causing his arrest and the court, upon motion of the state and after a hearing without a jury may continue, modify or revoke the probation as the evidence warrants.

"(b) On the date the probation is revoked, the finding of guilty becomes final and the court shall render judgment thereon against the defendant. The judgment shall be enforced as in other cases and the time served on probation may not be credited or otherwise considered for any purpose."

Since Article 42.13, makes no reference to the suspension of sentence in misdemeanor cases when probation has been granted, and furthermore, since Section 4 of said Article precludes the court from even entering judgment upon a finding of guilty except if and when said probation is revoked as provided in Section 6 of that Article, it is the opinion of this office that a person placed on probation after being found guilty of the misdemeanor offense of driving while intoxicated does not automatically lose his driver's license since Article 6687b, Section 25 (c) is not applicable unless and until the probation is revoked as provided in Article 42.13, Section 6.

S U M M A R Y

A person convicted of the felony offense of driving while intoxicated, second offense, and placed on probation in accordance with the terms of Article 42.12, Vernon's Code of Criminal Procedure of Texas, 1966, automatically loses his driver's license. The defendant convicted of the misdemeanor offense of driving while intoxicated and placed on probation in accordance with the terms of Article 42.13, Vernon's Code of Criminal Procedure of Texas, 1966, does not automatically lose his driver's license unless and until his probation is revoked and the court enters judgment on the

the finding of guilty in accordance with
the terms of Article 42.13.

Yours very truly,

WAGGONER CARR
Attorney General of Texas

By Sam Kelley
Sam Kelley
Assistant Attorney General

SK/lh

APPROVED

OPINION COMMITTEE

W. V. Geppert, Chairman
Gilbert Pena
Douglas Chilton
W. O. Shultz

APPROVED FOR THE ATTORNEY GENERAL
BY: T. B. Wright