

1948

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### Recommended Citation

Angelyn Avery, Revocation of Drivers' Licenses for Out-of-State Violations, 39 J. Crim. L. & Criminology 52 (1948-1949)

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## CRIMINAL LAW CASE NOTES AND COMMENTS

Prepared by students of Northwestern University School of Law, under the direction of student members of the Law School's Legal Publication Board.

Peter A. Dammann, *Criminal Law Editor*

### Revocation of Drivers' Licenses for Out-of-State Violations

In an effort to cope with the rapidly growing number of automobile accidents, several states have adopted statutes authorizing the revocation or suspension of drivers' licenses for traffic offenses committed out of state. Following the lead of New York, Pennsylvania, and others, Wyoming has included such a provision in its Chauffeurs' and Drivers' License Act of 1947.<sup>1</sup>

The statute, which gives to Wyoming its first plan for licensing drivers, provides for the mandatory suspension, cancellation, or revocation of licenses of drivers who have been convicted of certain specified offenses.<sup>2</sup> In addition, the statute vests discretionary authority with the State Highway Department to conduct investigations and to suspend, cancel, or revoke licenses upon various findings of fact, one of which is that the licensee "has committed an offense in another State which, if committed in this State, would be grounds for suspension or revocation."<sup>3</sup> A driver may obtain judicial review of a decision of the Highway Department suspending, cancelling, or revoking his license by filing an application for a hearing within 30 days before the district court of the county in which he resides.<sup>4</sup>

It has long been recognized that operation of vehicles on the public highways is a conditional privilege and not a natural right, and that the various states, under their police power, have the authority to stipulate reasonable conditions under which the privilege may be exercised. Courts have upheld the revocation of licenses of residents of a state for offenses committed within the state,<sup>5</sup> and have also permitted the imposition of

<sup>1</sup> Wyo. Comp. Stat. (Supp. 1947) §§60-1501—60-1528, Laws (1947) c. 162.

<sup>2</sup> Wyo. Comp. Stat. (Supp. 1947) §§60-1515 (1) and (2).

<sup>3</sup> Wyo. Comp. Stat. (Supp. 1947) §60-1515 (3): "The Department may conduct an investigation to determine whether the license shall be suspended, cancelled or revoked upon a showing by its records or other sufficient evidence that the licensee: (a) . . . (b) Has committed an offense in another State which, if committed in this State, would be grounds for suspension or revocation. . . ."

Section 60-1515 (4) gives the Department broad authority upon appropriate findings to suspend or cancel or revoke a license for a period of not more than one year "for cause satisfactory to the Department."

<sup>4</sup> *Ibid.* In addition Subsection 4 concludes with the proviso that "the district court in any such proceeding shall have power, in its discretion, upon motion and affidavit of the licensee, and with or without hearing thereon as the court shall decide, to temporarily set aside or suspend the action of the Highway Department upon such terms or conditions as the court may determine until such time as the matter may be finally determined. . . ."

<sup>5</sup> *Commonwealth v. Ellett*, 174 Va. 403, 4 S. E. (2d) 762 (1939); *Law v. Commonwealth*, 171 Va. 449, 199 S. E. 516 (1938); *Nutter v. State Road Commission*, 119 W. Va. 312, 193 S. E. 549, dissent at 194 S. E. 270 (1937); *Commonwealth v. Harris*, 278 Ky. 218, 128 S. W. (2d) 579 (1939); *Sullins v. Butler*, 175 Tenn. 468, 135 S. W. (2d) 930 (1940); *Rawson v. Department of Licenses*, 15 Wash. (2d) 364, 130 P. (2d) 876 (1942).

certain regulations upon non-resident motorists.<sup>6</sup> The Wyoming statute presents the additional question of whether a state has the power to use out-of-state traffic offenses as a basis for the revocation of drivers' licenses.

An argument that might be advanced against the validity of the Wyoming statute is that regardless of a state's right to make a domestic occurrence cause for revocation of a license, it is an unreasonable extension of police power to use as a cause an extrastate happening, because in so doing the state extends its police power beyond its borders.<sup>7</sup> Such a contention would seem to overlook the fact, however, that a state is not limited to its own boundaries in guarding the safety of its citizens; it may and frequently does take cognizance of what happens in other states.<sup>8</sup> In basing the revocation of a license on an offense committed in another state, Wyoming does not extend its police power into the other state (nor does the other state extend its police power into Wyoming), but merely determines from the licensee's conduct in the other state that he is unqualified to operate an automobile in Wyoming. Revocation or suspension of drivers' licenses for offenses committed out-of-state would seem but a reasonable exercise of the state's power to exclude incompetent drivers from its highways.<sup>9</sup> Moreover, provisions in the Wyoming statute for judicial review of decisions of the state Highway Department

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<sup>6</sup> *Hendrick v. Maryland*, 235 U. S. 610, 622-624 (1915) (state motor vehicle law imposing reasonable license fees on motors including those of non-residents held a valid exercise of police power and not a burden on interstate commerce); *Hess v. Pawloski*, 274 U. S. 352 (1927) (upheld substituted personal service on non-resident motorist in a suit arising out of an auto accident occurring within the state); *Kane v. New Jersey*, 242 U. S. 160, 167 (1916) (sustained statute requiring non-resident owners of motor vehicles to appoint a state official as agent upon whom process could be served in legal proceedings against them resulting from the operation of their motor vehicles within the state); *Hirsch v. Warren*, 253 Ky. 62, 68 S. W. (2d) 767 (1934) (held statute valid which provided for substituted service on secretary of state in suit against non-resident).

These regulations have been sustained in part on the fictions of consent or waiver; i.e., that the non-resident using the highways of a state consents thereby to any reasonable measure imposed by that state.

<sup>7</sup> For a comparable argument see the dissent in *Nulter v. State Road Commissioner*, 119 W. Va. 312, 321, 193 S. E. 549, dissent at 194 S. E. 270 (1937).

<sup>8</sup> A person may be deprived of a privilege because of a conviction in another state. For example, several cases have sustained the disbarment of attorneys who had been convicted in another state of felonies or misdemeanors involving moral turpitude. *In re Shepard*, 35 Cal. App. 492, 170 Pac. 442 (1917); *In re Peters*, 73 Mont. 284, 235 Pac. 772 (1925); *State ex rel. Sanford v. Riddle*, 213 Ala. 430, 105 So. 259 (1925); *In re Kerl*, 32 Idaho 737, 188 Pac. 40 (1920); *Ex parte McDonald*, 112 Mont. 129, 113 P. (2d) 790 (1941).

<sup>9</sup> The revocation or suspension of the privilege of operating a motor vehicle is not the taking of property without due process of law. Cases cited *supra* note 5. *Nulter v. State Road Commissioner*, 119 W. Va. 312, 193 S. E. 549, dissent at 194 S. E. 270 (1937) involved the application of a "Financial Responsibility" Statute to an accident out-of-state. W. Va. Acts (1935) c. 61, §3 provided that a person's license should be suspended for failure to pay within 30 days a final judgment of \$50 or more secured against him in a court in any state or Canada for damages on account of personal or property injury resulting from operation of a motor vehicle. The court rejected the contention that it was an unconstitutional extension of police power to revoke a license for failure to pay a judgment of a court of another state.

Although there are no cases directly in point, it seems very unlikely that suspension of a license for an out-of-state traffic offense would be deemed unconstitutional as an unreasonable restraint on interstate commerce. Compare the cases cited *supra* note 6.

would seem to provide drivers with adequate protection from possible administrative abuse.<sup>10</sup>

Few judicial opinions could be located dealing with statutory provisions similar to those in the Wyoming statute. In *Kerns Appeal*<sup>11</sup> the Secretary of Revenue of Pennsylvania suspended the license of a resident of that state who had been convicted in New Jersey for violating the speed limit of New Jersey. In affirming the suspension, the Pennsylvania court discussed the essential reasonableness of the statute in the following language: "The real purpose of the act under which petitioner's license was suspended was to control the licenses of those operators who do not obey the motor vehicle regulations on the public highways, whether they demonstrate their disregard, recklessness or unfitness in Pennsylvania or elsewhere."

The section of the Wyoming act authorizing the suspension, cancellation, or revocation of licenses for out-of-state offenses is apt to present difficult problems of administration which may defeat its purpose. One such problem may arise from the requirement that the offense must be one "which, if committed in this State, would be grounds for suspension or revocation."<sup>12</sup> Because of the lack of uniformity in the traffic codes of the various states, the Highway Department and reviewing courts may have difficulty in determining whether a violation for which a driver has been convicted in another state is one which would be recognized as an offense in Wyoming. In *Cashion v. Harnett*,<sup>13</sup> a New York resident had been convicted in Massachusetts for driving while under the influence of intoxicating liquor, and his right to drive in Massachusetts had been suspended. The commissioner of motor vehicles of New York thereupon revoked his New York chauffeur's license pursuant to a New York statute<sup>14</sup> which provided that a driver's license must be revoked for driving "while intoxicated," even though the conviction may be in another state. The Appellate Division of the New York Supreme Court, however, sustained an order of certiorari annulling the revocation of the license on the grounds that proof of intoxication was essential for conviction under the New York statute, but not under the Massachusetts law, which merely forbade "driving while under the influence of intoxicating liquor"; hence

<sup>10</sup> Note 4 *supra*.

<sup>11</sup> 51 District and County Reports 136 (Pa. 1944). The motorist contended at the hearing that while he had on four occasions exceeded the New Jersey speed limit of 40 miles per hour, he had never exceeded 50 miles per hour, the Pennsylvania limit. He, therefore, contended that the Pennsylvania authorities could not suspend or revoke his license; for he had done nothing which would violate the Pennsylvania law had the action occurred in Pennsylvania. But the court held that this was a difference of degree only and did not change the essence, substance, or identity of the offense; for the offense was that of "speeding" and it made no difference in what state it occurred. The law of the state wherein the offense was committed was held to govern, a conviction therein was *res judicata* in Pennsylvania, and the Pennsylvania Secretary of Revenue could, therefore, suspend the license. The suspension was pursuant to Pa. Stats. 75, §192(e), Laws (1929) 905, §615(e), which provided that the Secretary of Revenue may suspend after a hearing "the operator's license . . . of any person licensed in the Commonwealth upon receiving notice of the conviction of such person in another state of an offense therein which if committed in this Commonwealth, would be grounds for the suspension or revocation of the license of an operator."

<sup>12</sup> Note 3 *supra*.

<sup>13</sup> 255 N. Y. S. 169 (1932).

<sup>14</sup> Section 71 of the Vehicle and Traffic Law of New York, as amended by Laws (1930), c. 26. The conviction in Massachusetts was under Mass. G. L. c. 90, §24.