

FORMAL OPINION

May 18, 1977

JOHN A. WADDINGTON, *Director*
Division of Motor Vehicles
25 South Montgomery Street
Trenton, New Jersey 08625

FORMAL OPINION 1977—No. 11.

Dear Director Waddington;

You have inquired as to the impact of L. 1977, c. 29, §6(a) upon motorists whose driving privileges have been suspended for violations of N.J.S.A. 39:4-50(a), driving while under the influence of intoxicants; N.J.S.A. 39:4-50(b), driving while impaired; and N.J.S.A. 39:4-50.2 *et seq.*, failing to undergo a breath alcohol determination test.¹ In particular, you ask for our advice with respect to the operation of the statute on those licensees subject to multiple suspensions imposed because of a first or subsequent intoxicated or impaired driving conviction in combination with a consecutive administrative suspension for refusing a breath test. You are also concerned with the application of §6(a) to those licensees with contemporaneous convictions of driving either while under the influence or while impaired, as well as with its effect upon licensees subject to two convictions imposed at the same time.

The primary focus of your inquiry, then, is the effect of §6(a) on multiply-suspended licensees and, specifically, whether they qualify for restoration upon service of a single six-month suspension. L. 1977, c. 29, §6(a) states that:

“Any person who, prior to the effective date of this amendatory and supplementary act, had been convicted of an alcohol-related offense, may, after service of at least six months of *a driver license suspension imposed by reason of such conviction* apply to the Director of the Division of Motor Vehicles for restoration of his license to operate a motor vehicle which application may be granted upon the condition that the person agrees to pursue and satisfy the requirements of a program of alcohol education or rehabilitation approved by the director.” (Emphasis added).

The language of §6(a) clearly provides that, with respect to the conviction of an alcohol-related offense under the previous law, the service of a minimum suspension of at least six months' duration is required before a motorist may qualify for restoration of driving privileges. Following service of that minimum period of suspension, the individual may then apply to the Director for restoration and the Director may grant the application, if the motorist agrees to undertake and complete an approved alcohol education or rehabilitation program. As the language plainly indicates, the six-month minimum suspension requirement relates to *a driver license suspension imposed by reason of a conviction of an alcohol-related offense*. Nothing in the wording of the provision suggests that the minimum suspension period is designed to satisfy all outstanding multiple suspensions imposed by virtue of a series of previous alcohol-related offenses or convictions.

This construction of the terms of §6(a) is fully supported by the legislative history of the act. In this respect, it is to be noted that L. 1977, c. 29 was premised to a great degree upon the *Report of the New Jersey Motor Vehicle Study Commission* (September 1975) (hereinafter “*MV Report*”).² Those portions of the *MV Report*

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pertaining to §6(a) clearly limited the applicability of the six-month minimum to a single offense. In this respect the Study Commission stated:

“On the effective date of a new statute, any persons who have served at least six months of a *license suspension by reason of an alcohol-related offense*, should be eligible for restoration providing they agree to participate in an appropriate education or rehabilitation program, and providing they have made satisfactory progress in or successfully completed the program . . .” *MV Report* at 153. (Emphasis added). See also *MV Report* at 157.

There is nothing in the *MV Report* to substantiate an assumption that a multiply-suspended licensee would qualify for restoration upon service of a single six-month suspension. In fact, the Study Commission does not appear to have commented upon or considered the multiply-suspended driver at all. See *MV Report* at 153, 157; “Minutes, Motor Vehicle Study Commission” (May 23, 1975) at 5 (hereinafter “Minutes”).

The Study Commission stated that individuals currently under license suspension be accorded some relief that would place them in a similar position as those who are convicted under the modified statute. *MV Report* at 151; “Minutes” at 2. To allow for restoration after service of a minimum of six months for a series of multiple suspensions would, on the contrary, place licensees convicted under pre-existing law in a more advantageous position than those subject to multiple suspension under the terms of the new law. See L. 1977, c. 29, §1. A statute should be construed in conformity with its underlying purposes and not so as to reach an inconsistent or incongruous result. *Federal Paper Board Co., Inc. v. Bogota*, 129 N.J. Super 308, 313 (App. Div. 1974), certif. den. 66 N.J. 317 (1974). It should not be assumed to have been the legislative purpose to allow for a single minimum six-month suspension in these circumstances. You are therefore advised that under the unequivocal terms of §6(a) an individual subject to multiple suspensions would qualify for restoration of driving privileges under the Act only after having served a minimum of six months of suspension independently attributable to each conviction of an alcohol-related offense.³

Very truly yours,

WILLIAM F. HYLAND

Attorney General of New Jersey

By: WILLIAM J. STOHLER

Deputy Attorney General

1. L. 1977, c. 29, §1 abrogates the distinction between driving while under the influence of alcohol and driving while ability to operate a motor vehicle is impaired, establishing instead the single offense of driving while under the influence of intoxicating liquor or drugs. See also L. 1977, c. 29, §8. L. 1977, c. 29, §6(a) provides the means for restoration of driving privileges for licensees convicted and subject to suspensions for alcohol-related offenses committed prior to the effective date of the Act.

2. The “Statement” on Senate No. 1423 (1976) which was ultimately enacted as L. 1977, c. 29 provided in part that:

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"This bill implements a major recommendation of the Motor Vehicle Study Commission as contained on pages 133-162 ["Drinking and Driving"] of its September 1975 Report...."

The sponsors of the bill were Senators Maressa and Vreeland, both of whom were members of the Motor Vehicle Study Commission. See also "Statement to Senate, No. 1423 (1976)," p. 2, item 9 (May 24, 1976), prepared by the Senate Law, Public Safety and Defense Committee.

3. By its own terms, L. 1977, c. 29, §6(a) has no bearing upon a motorist whose sole ground of suspension is an offense having an applicable suspension period limited to six months. Likewise, it has no bearing upon a motorist subject to a series of suspensions, each of which is based on an offense having an applicable suspension period limited to six months. See, for example, N.J.S.A. 39:4-50(b) (first offense), N.J.S.A. 39:4-50.4, or the two in combination. In each case, the mandated six-month suspension would be completely served before the cited provision could be operative. As a result, these motorists are entitled to restoration without regard to §6(a) after serving the full six-month suspension or the appropriate multiple thereof.

Of course, to be eligible for restoration under §6(a), a motorist must also satisfy all other statutory requirements relevant to his or her situation. See, e.g., N.J.S.A. 39:6-31, N.J.S.A. 39:6-40, N.J.S.A. 39:3-10a.

May, 20, 1977

EDWARD G. HOFGESANG, *Director*
Division of Budget and Accounting
Department of the Treasury
State House
Trenton, New Jersey 08625

FORMAL OPINION 1977—No. 12.

Dear Director Hofgesang:

The adoption of Article VIII, Sec. 1. para. 7, of the State Constitution has precipitated the inquiry as to whether N.J.S.A. 54A:9-25.1 may be given effect consistently with the constitutional provision. Article VIII, Sec. 1, para. 7, approved at the general election held on November 2, 1976 effects a constitutional dedication of the proceeds of the Gross Income Tax:

"No tax shall be levied on personal incomes of individuals, estates and trusts of this State unless the entire net receipts therefrom shall be received into the treasury, placed in a perpetual fund and be annually appropriated, pursuant to formulas established from time to time by the Legislature, to the several counties, municipalities and school districts of this State exclusively for the purpose of reducing or offsetting property taxes."

N.J.S.A. 54A:9-25.1, enacted as part of the Gross Income Tax Act (N.J.S.A. 54A:9-1 *et seq.*; L. 1976, c. 47) approved by the Governor on July 8, 1976 provides: