

OFFICIAL OPINION NO. 75

December 6, 1947.

Hon. Thomas E. Bath,
Secretary of State,
State House,
Indianapolis, Indiana.

Dear Mr. Bath:

I have your request asking for an official opinion on the following questions:

“QUESTION I: In the event the State Board of Health files information with the Bureau of Motor Vehicles relative to epilepsy or disorders causing lapses of consciousness do I have any discretion in the revocation or suspension of driving privileges.

“QUESTION II: Likewise, do I have any discretion with reference to suspension or revocation of driving privileges with reference to the causes set forth in Section 39, page 515, Chapter 159 of the Acts of 1947 and also with reference to Section 5 (b) thereof.”

Chapter 9 of the Acts of the Indiana General Assembly for the year 1947 by its provisions requires all physicians to report to the State Board of Health in writing, the name, age, and address of every person so diagnosed by him as a case of epilepsy or similar disorders characterized by lapses of consciousness. The State Board of Health in turn is required to report this information to the Bureau of Motor Vehicles which is to be used by the Bureau for the purpose of determining the eligibility of any person to operate a motor vehicle on the highways of this state. There is no provision in this Act directing the Commissioner of the Bureau of Motor Vehicles to suspend or revoke the driving permit of any person so reported, and the Act indicates that the matter is to be left to the Commissioner to determine the eligibility of any such person to operate a motor vehicle on the highways of this state.

I have been unable to find any specific provision in Chapter 159 of the Acts of the Indiana General Assembly for the year

1947 making it the duty of the Commissioner to revoke or suspend the driving permit of any person who has been reported by the State Board of Health as an epileptic or having a similar condition characterized by lapses of consciousness. Section 39 of Chapter 159 of the 1947 Acts provides in part as follows:

“Commissioner *may* suspend or revoke license and permits.

“(a) Upon the filing of a complaint in writing with the Commissioner against any person holding a license or permit under and by virtue of the provisions of any act relating to the licensing of persons, drivers, chauffeurs and operators of motor vehicles, or against any person applying for a license or permit or the renewal thereof, under the provisions of any such act, by any person including deputies, agents or employees of the Department, the Commissioner may cite any person for a hearing to consider the suspension or revocation of a license or permit issued under the provisions of any such act, upon any of the following charges:

“(1) That such person has committed any offense for the conviction of which mandatory revocation of license is provided in this Act.

“(2) That such person has, by reckless or unlawful operation of a motor vehicle, caused or contributed to an accident resulting in death or injury to any other person or property damage.

“(3) That such person is incompetent to drive a motor vehicle or is afflicted with mental or physical infirmities or disabilities rendering it unsafe for such person to drive a motor vehicle upon the highways.

“(4) That such person is a reckless or negligent driver of a motor vehicle or has committed a violation of the motor vehicle laws of this State.

“(5) That such person is guilty of a violation of the provisions of this Act.

“(6) That such person is guilty of any of the penal provisions of this Act.

“(7) That such person has committed any offense, either a misdemeanor or a felony, with regard to the operation, regulation or licensing of motor vehicles or of operators, or of any city ordinance relating to traffic violation.

“Whenever the Department issues any citation upon any complaint in writing for any of the reasons above set out in this Section, the Department shall immediately notify the licensee or permit holder of the time and place of the hearing thereon and afford him an opportunity of a hearing, in the county in which the person so cited and against whom such complaint is filed resides, before the Commissioner or any deputy or agent of the Commissioner designated for the purpose of hearing the same, and shall in such citation state the time, date and place, when and where such hearing shall be held, and upon such hearing, the licensee or permit holder shall have the right to appear and to be heard and upon such hearing, *the Commissioner or his deputy or agent shall issue an order of suspension or revocation or decline to suspend, revoke or issue such license or permit.*

“The Commissioner or his deputy or agent assigned to hear any case shall have the right to revoke the operator’s or chauffeur’s license of any person and any and all of the registration certificates and plates for any motor vehicle or require the person cited to operate for a period of one (1) year under a restricted license and make such reports as the Commissioner may require by rule.” (My emphasis.)

From the foregoing quoted part of the statute it is evident that when a complaint is filed with the Commissioner charging that the person is incompetent to drive a motor vehicle or is afflicted with mental or physical infirmities or disabilities rendering it unsafe for such person to drive a motor vehicle upon the highways, it is within the discretion of the Commissioner after hearing to revoke or suspend the driving privileges of any person so charged or to require such person to operate under a restricted license. I believe that the information which is filed by the State Board of Health with

the Commissioner above referred to would be in the nature of a complaint, and should be handled in the same manner above indicated.

Accordingly, in answer to your first question it is my opinion that you as the Commissioner of the Bureau of Motor Vehicles have a discretion in the revocation or suspension of driving privileges of persons who have been reported by the State Board of Health to you as being epileptic or having similar disorders causing lapses of consciousness.

This same conclusion applies to the other causes specified in the foregoing Section 39 of Chapter 159 of the 1947 Acts, for the Commissioner is expressly authorized under said act to issue an order of suspension or revocation or decline to suspend, revoke or issue such license or permit. Accordingly, in answer to the first part of your second question it is my opinion that you do have discretion with reference to the suspension or revocation of driving privileges with reference to the causes set forth in Section 39 of Chapter 159 of the 1947 Acts.

In answer to the last part of your second question Section 5 (b) of Chapter 159 of the 1947 Acts provides in part as follows:

“(b) The Commissioner *shall suspend or revoke* forthwith without notice or hearing, the operator's or chauffeur's license or current driving license and all registration certificates and registration plates issued or registered in the name of any person who shall have been convicted of, or shall have pleaded guilty to, and of the following offenses:

“(1) Manslaughter resulting from the operation of a motor vehicle.

“(2) Perjury or the knowingly making of a false affidavit to the Department under this Act or any other law of this State requiring the registration of motor vehicles or regulating their operation upon the highways.

“(3) Any crime punishable as a felony under the motor vehicle laws of this State, or any other felony in the commission of which a motor vehicle is used.

“(4) Conviction or failure of bail upon three (3) charges of reckless driving, all within the preceding twelve (12) months.

“(5) A conviction of a driver of a motor vehicle involved in any accident upon a charge of failing to stop and disclose his identity at the scene of an accident.

“Such licenses of such persons shall also be suspended when such persons are convicted in any state for any said offenses.

“(c) Such suspensions or revocations shall remain in effect and no new or renewal license shall be issued such person and no motor vehicle shall be registered in the name of such person for a period of not more than one (1) year, and not then, unless and until such person shall give and thereafter maintain for a period of three (3) years proof of his financial responsibility in the future in the manner specified in this Act.
* * *” (My emphasis.)

It is perfectly clear from the foregoing statute that as to the causes enumerated therein it is absolutely mandatory on the Commissioner of the Bureau of Motor Vehicles to suspend or revoke the driving privileges of any person who has been convicted of or shall have pleaded guilty to any of said causes. Accordingly, you have no discretion with reference to the suspension or revocation of driving privileges under Section 5 (b) of Chapter 159 of the Acts of 1947.

OFFICIAL OPINION NO. 76

December 10, 1947.

Hon. Ralph F. Gates, Governor,
State of Indiana,
State House,
Indianapolis, Indiana.

Dear Governor Gates:

I am in receipt of your letter of November 24th requesting my official opinion as follows: