

**MOTOR VEHICLES, BUREAU OF: Drivers' license suspension; length of time of suspension of drivers' license; driving while intoxicated, suspension of license for.**

July 22, 1937.

Robert C. Hill, Chief Hearing Judge,  
Bureau of Motor Vehicles,  
Indianapolis, Indiana.

Dear Sir:

In your letter of July 17th you set out that there is an inconsistency in certain Acts of the last legislature as to the revocation and suspension of driver's licenses for the offense of driving while under the influence of intoxicating liquor.

Section 20 of chapter 71 of the Acts of 1937 provides in part as follows:

"The commissioner shall forthwith suspend for a period of not more than one year the license or permit of any person, upon receiving a record of the conviction of such person of any of the crimes hereinafter enumerated."

There then follows a provision in case of an appeal and a provision for a modification of the period of suspension. Following this then, there is enumerated the various crimes for which such license may be suspended. Under part 2, the Act says this:

"2. Driving a vehicle while under the influence of intoxicating liquor or narcotic or other habit forming drug: Provided, That the license or permit of any person so convicted shall not be suspended for any period longer than that fixed by the court."

Section 35 of this same Act provides that:

"This Act, together with all the provisions thereof, shall be in full force and effect from and after the thirty-first day of December, 1937, at twelve o'clock midnight."

Section 36 is the repealing clause and repeals all laws or parts of laws in conflict and expressly repeals chapter 162 of the Acts of 1929 and all Acts supplemental or amendatory thereof.

Chapter 126 of the Acts of 1937, which is an amending Act, provides in part in the first section when speaking of one who operates a motor vehicle or motor bicycle on the public highways of this State while under the influence of intoxicating liquor or narcotic drugs, that:

“If such person be found guilty of a first offense, the court trying the case shall enter an order on the records of the court prohibiting said person from driving any automobile or motor vehicle for a period of not exceeding one year; \* \* \*.”

In your letter you state that since chapter 71 does not go into effect until the last day of December, 1937, that your department has been proceeding under chapter 162 of the Acts of 1929. Section 16 of the Acts of 1929 provides for a mandatory suspension or revocation of licenses by the department for certain offenses, among which is a mandatory suspension for one year of a license for the conviction of anyone of the crime of driving a vehicle while under the influence of intoxicating liquor, etc.

You state in your letter that you are having difficulty with some of the courts for the reason that upon conviction of an individual for the crime of operating a motor vehicle while under the influence of liquor, licenses of such individuals are being suspended by virtue of chapter 126, Acts of 1937, for a period of time less than one year. You say that there is an apparent conflict in the law and you want to know what should be done relative thereto.

Chapter 126 of the Acts of 1937 as to the penalty of suspension is, I agree, in irreconcilable conflict with section 16, part (a) 2 of the Acts of 1929. The rule of law applicable is that where there is an irreconcilable conflict between two statutes a later expression of the legislature will prevail against a former one. *Newbauer v. State*, 161 N. E. 826. Thus then chapter 126 of the Acts of 1937 would control and your department would have no authority to suspend a license for a longer period of time than that time ordered by the court.

This would be true even though chapter 71 of the Acts of 1937 did not make an allowance for a court order as it does in the proviso of point 2 under section 20. The rule of law applicable to a situation such as this where two statutes were passed at the same session of the legislature, but where they are in irreconcilable conflict is that the later of two incon-

sistent statutes will prevail, although the prior one is not to take effect until a time subsequent to the passage and taking effect of the latter one. However, there is no conflict between chapter 71 of the Acts of 1937 and chapter 126 of the Acts of 1937. It is my opinion that beginning at midnight December 31, 1937, chapter 71 will provide for the suspension of the license of a person who has been convicted of driving a vehicle while under the influence of intoxicating liquor, etc., only for that period of time fixed by the court who convicted the individual of such offense.

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**ELECTION COMMISSIONERS, STATE BOARD OF: Special elections, whether registration law applies. Dunkirk, city of, procedure for general election under chapter 273 of Acts of 1937.**

July 24, 1937.

Hon. Fred C. Gause,  
Member State Board of Election Commissioners,  
1300 Fletcher Trust Building,  
Indianapolis, Indiana.

Dear Judge:

I have before me your letter enclosing a copy of a letter to the State Board of Election Commissioners from Mr. Ernest L. Steed, Clerk of the Jay Circuit Court, making certain inquiries concerning a special election to be held in the city of Dunkirk, Jay County, Indiana, as provided in chapter 273 of the Acts of the General Assembly of 1937. You ask that the letter of Mr. Steed be treated as a request from the State Board of Election Commissioners for an official opinion in answer to the questions submitted by him.

It is stated that the City of Dunkirk, Indiana, became a town by virtue of the provisions of chapter 233 of the Acts of 1933, since its population as revealed by the last preceding U. S. census was less than three thousand. It is stated, however, that the town of Dunkirk did not hold a town election under this classification due to the issuing of an injunction and restraining order.

A written petition or petitions signed by twenty per cent or more of the legal voters of Dunkirk has been filed with the Board of Election Commissioners of Jay County within the time as prescribed and in conformity with section 1 of chapter 273 of the Acts of 1937.