MOTOR VEHICLES, BUREAU OF: Suspension of license on final judgment. Withholding judgment, license suspension when.

June 9, 1938.

Hon. Benjamin Friedman,
Director, Financial Responsibility Division,
Department of Treasury, Bureau of Motor Vehicles,
State House,
Indianapolis, Indiana.

Dear Sir:

In your letter of June 4 you direct our attention to a portion of Section 2 of Chapter 113 of the Acts of 1935 at page 414. The portion of said section with which your letter concerns itself reads as follows:

"The motor vehicle operator's license, chauffeur's license, and all of the registration certificates and number plates of any person shall be suspended forthwith without notice or hearing by the department whenever such person shall, by a final order or judgment have been convicted of or shall have pleaded guilty to or shall have forfeited any bail or collateral deposited to secure his appearance for trial as defendant (where such forfeiture shall not have been vacated) for any offense hereafter committed which requires suspension or revocation of the licenses of such person in this state or in any province which, if committed in this state, would require suspension or revocation of the licenses of such person in this state."

After directing our attention to the above quoted statute, your letter then says:

"It has long been the practice of many courts especially when trying persons on a charge of operating a motor vehicle while under the influence of intoxicating liquor, to withhold judgment and certify the record accordingly to this department. This department has always treated such cases as a conviction and has acted accordingly, on the theory that the court would have either entered a finding of not guilty or would have dismissed or discharged the defendant had the evidence in the case warranted the court in doing so.

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"The question with which we are confronted is whether or not this department is justified in taking such action on the part of the court as a finding of guilty even though judgment is withheld."

It is apparent by a reading of the above quoted section of Chapter 113 that the prerequisite to the suspension of any license, certificate or number plate without notice or hearing by the department under the provisions of this section that there be a final order or judgment. The question then is whether, when a court withholds judgment, the provisions of this said section 2 are satisfied.

It was held in the case of Cherry v. Cherry, 148 N. E. 570, 572, that:

"Sentence is the final judgment in a criminal case... sentence temporarily suspended or delayed by action of the court is not, or may not be, the final judgment until it becomes operative."

This same rule finds support in the case of Commonwealth v. Dascalakis, 246 Mass. 12, 19, 140 N. E. 470.

Under the facts which you set out in your letter where a judgment is withheld there stands against the alleged violator only a verdict or decision and not a judgment. Under the rule laid down in the Massachusetts case, quoted from above, it is said there can be no final judgment until there is a sentence. By withholding judgment, the verdict or decision, whichever the case may be, does not become operative.

Since then, there is no final judgment or order, one of the essential elements to make said Section 2 operative is lacking. I want to point out to you, however, that because there is no final order or judgment it does not mean that the license, certificate or number plate may not be suspended. It simply means that it may not be suspended without notice or hearing by the department.

I should like also to call your attention to the provision of the portion of the Act heretofore set out which provides that on a plea of guilty the department shall be empowered to forthwith make the suspensions. In my opinion, when a plea of guilty is entered by the violator, which plea upon its properly being certified to the department pursuant to the requirements of law is sufficient authority for proceeding under the section for the suspension of the license, certificate and the number plate as therein provided.