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Administrative Law—Revocation of Driver's License on Foreign Conviction

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permitted. On July 20, 1953, the Authority notified plaintiff that his request was denied. On September 9, 1953, the Authority authorized a transfer from a town within the same county to the town in which plaintiff desired his liquor store to be located. Plaintiff petitioned for an order directing the Authority to grant his request. The Court of Appeals, in a 4-3 decision, affirmed an order dismissing the petition.³³ The State Liquor Authority has power to limit the number of licenses to be issued within the state or any political subdivision thereof, and in connection therewith to prohibit the acceptance of application for such classes of licenses as have been so limited.³⁴

Rule 17 of Rules of the Authority³⁵ states: "it is determined that public convenience and advantage are now adequately served by the number of premises licensed." The Schedule³⁶ drawn up by the Authority was in terms of counties. §30 of the Alcoholic Beverage Control law provides for a "local" board in every county. It would be too cumbersome to work out the Schedule for subdivisions smaller than counties. For these reasons, the Court felt that the Authority did not overstep its jurisdiction in refusing plaintiff's request. So long as the Authority determined that it was not for the public convenience to have an additional liquor store in that county, it could allow a transfer *within* that county of existing liquor stores.

Revocation of Driver's License on Foreign Conviction

The possession of a driver's license is a vested property right of which the holder may not be deprived except with due process.³⁷ So far has the New York Legislature gone in protecting a license that it requires a magistrate before whom a traffic offender is brought to warn the defendant that upon a plea of guilty his license may be revoked.³⁸ New York statute, however, makes mandatory the revocation of a driver's license after the licensee has been convicted, even outside of the state, of operating a motor vehicle while under the influence of intoxicating liquor.³⁹ As a plea of guilty before a foreign court is not governed by Section 335-a of the Code of Criminal Procedure, and especially where there is no proof in the record that a defendant was represented by counsel, the courts, as evidenced by *Moore v. MacDuff*,⁴⁰ will examine a foreign conviction minutely before permitting it to be used as grounds for revocation of a license under the Vehicle and Traffic Law.⁴¹

33. *Brenner v. O'Connell*, 308 N. Y. 636, 127 N. E. 2d 715 (1955).

34. N. Y. ALCOHOLIC BEVERAGE CONTROL LAW §17(2).

35. APPENDIX, N. Y. ALCOHOLIC BEVERAGE CONTROL LAW.

36. Schedule is contained in Rule 17, note 35 *supra*.

37. *Wignall v. Fletcher*, 303 N. Y. 435, 103 N. E. 2d 728 (1952).

38. N. Y. CODE CRIM. PROC. §335-a.

39. N. Y. VEHICLE & TRAFFIC LAW §71, subd. 2(b).

40. 309 N. Y. 35, 127 N. E. 2d 741 (1955).

41. See note 39, *supra*.

The Canadian law,⁴² to a violation of which the petitioner in the instant case pleaded guilty and which formed the basis for the revocation of his license, covered much more than merely operating a motor vehicle while under the influence of intoxicating liquor, it included such offenses as driving while ability is impaired by drugs, and having the care and control of a motor vehicle not in motion when ability to drive is impaired by liquor or drugs. To ascertain the offense of which a person has been convicted the court may look only to the certificate of conviction,⁴³ which here recited Section 285 subdivision 4(a) of the Canadian Criminal Code. Since the factual situation for which petitioner might have been convicted does not of necessity fall into the provision of Section 71, subdivision 2 (b) of the Vehicle and Traffic Law, the petitioner was entitled to retain his license.⁴⁴

A weak dissent merely disputed the applicability of *People v. Olah*,⁴⁵ this dissent has little basis in law, and seems over-influenced by a desire to cut the automobile accident rate.

License Suspension for Habitual or Persistent Violation

In *Ross v. Mac Duff*,⁴⁶ the Commissioner of Motor Vehicles suspended appellee's license to operate a motor vehicle "for habitual or persistent violation" of the traffic laws pursuant to the Vehicle and Traffic Law.⁴⁷ This determination was annulled by the Appellate Division⁴⁸ because of an absence of any proof in the record that petitioner had been warned of the consequences with respect to his operator's license, in conformance with section 335-a of the Code of Criminal Procedure, upon two occasions when he pleaded guilty to speeding. Accordingly, the Appellate Division felt these convictions could not be used as grounds for suspension of his license. Without considering them, the minimum number of points required to find appellee an habitual or persistent violator under the commissioner's point system could not be obtained. The Court of Appeals reversed the Appellate Division holding first that the "habitual or persistent violation" provision was constitutional against an attack that legislative functions had been delegated to an administrative body without providing any adequate standards defining the words "habitual" or "persistent", and secondly that section 335-a of the Code of Criminal Procedure required a magistrate's warning only in cases where there was power to suspend or revoke a license as the direct result of a conviction on the particular charge presently before the court.

42. CANADIAN CRIMINAL CODE, §285, subd. 4 (a).

43. *People v. Olah*, 300 N. Y. 96, 89 N. E. 2d 329 (1949).

44. *Ibid.*

45. *Ibid.*

46. 309 N. Y. 56, 127 N. E. 2d 806 (1955).

47. N. Y. VEHICLE & TRAFFIC LAW §71, subd. 3, par. (d).

48. *Ross v. Mac Duff*, 284 App. Div. 900, 134 N. Y. S. 2d 401 (2d Dep't 1954).