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Administrative Law—License Suspension for Habitual or Persistent Violation

Dawn Girard

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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).

Licenses and certificates of registration may be suspended or revoked for "habitual or persistent violation" of any of the provisions of a traffic law.⁴⁹ The legislative power of this state is vested in the Senate and Assembly,⁵⁰ and for an administrative body to carry out validly the provisions of a statute enacted by the legislature "guides and proper standards" must be maintained in the statute itself.⁵¹ The "habitual or persistent violation" provision of the Vehicle and Traffic Law complies with these criteria.⁵² "Where it is difficult or impractical for the Legislature to lay down a definite comprehensive rule, a reasonable amount of discretion may be delegated to administrative officials."⁵³ "The judicial approval accorded these broad standards for administrative action is a reflection on the necessities of modern legislation . . . The legislative process would frequently bog down if Congress were constitutionally required to appraise beforehand the myriad of situations to which it wishes a particular policy to be applied and to formulate specific rules for each situation . . ." ⁵⁴

Section 335-a of the Code of Criminal Procedure provides that a magistrate, upon arraignment in this state of a resident charged with a traffic law violation and before accepting a plea, must instruct the defendant at the time of arraignment in substance as follows: "If you are convicted not only will you be liable to a penalty, but in addition your license to drive a motor vehicle . . . and your certificate of registration, if any, are subject to suspension and revocation as prescribed by law."⁵⁵ No suspension or revocation of a license or certificate of registration will be made because of a judgment of conviction if the suspending or revoking officer is satisfied that the magistrate who pronounced the judgment failed to warn the defendant pursuant to section 335-a of the Code of Criminal Procedure.⁵⁶ Under the rule in the instant case, the warning in section 335-a need not be given in a case wherein there is no power to revoke the defendant's license upon conviction; it is only on the particular conviction that yields the power to evoke that the warning must be given.⁵⁷

49. See note 47, *supra*.

50. N. Y. CONST. art. III, §1.

51. *Matter of Fink v. Cole*, 302 N. Y. 216, 97 N. E. 2d 873 (1951). See also: *Packer Collegiate Institute v. University of State of New York*, 298 N. Y. 184, 81 N. E. 2d 80 (1948); *Matter of Small v. Moss*, 279 N. Y. 288, 18 N. E. 2d 281 (1938).

52. 309 N. Y. at 59, 127 N. E. 2d at 807.

53. *Marburg v. Cole*, 286 N. Y. 202, 36 N. E. 2d 113 (1941).

54. *American Power Co. v. Security & Exchange Commission*, 329 U. S. 90 (1946).

55. N. Y. CODE CRIM. PROC. §335-a.

56. N. Y. VEHICLE & TRAFFIC LAW §71, subd. 6 (last unnumbered paragraph).

57. See *Johnston v. Fletcher*, 300 N. Y. 470 88 N. E. 2d 657 (1949); *De Lynn v. Mac Duff*, 305 N. Y. 501, 114 N. E. 2d 12 (1953); *De Martino v. Mealey*, 284 N. Y. 231, 30 N. E. 2d 486 (1940).