



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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FILE NO. 98-007

MOTOR VEHICLES:
Constitutionality of Statute
Mandating Impoundment of Uninsured
Motor Vehicle Where Operator's
Driver's License is Suspended or Revoked.

The Honorable Doug Scott
State Representative, 67th District
Vice-Chairman, House Judiciary I Committee
2071-L Stratton Building
Springfield, Illinois 62076

Dear Representative Scott:

I have your letter wherein you inquire regarding the constitutionality of subsection 6-303(e) of the Illinois Vehicle Code (625 ILCS 5/6-303(e) (West 1996)), which authorizes the impoundment of motor vehicles driven by persons with suspended or revoked driver's licenses which are also in violation of the mandatory insurance requirements imposed by section 7-601 of the Illinois Vehicle Code (625 ILCS 5/7-601 (West 1996)). For the

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reasons hereafter stated, it is my opinion that the statute is enforceable as written.

Subsection 6-303(e) of the Illinois Vehicle Code provides:

"§ 6-303. Driving while driver's license, permit or privilege to operate a motor vehicle is suspended or revoked.

* * *

(e) Any person in violation of this Section who is also in violation of Section 7-601 of this Code relating to mandatory insurance requirements, in addition to other penalties imposed under this Section, shall have his or her motor vehicle immediately impounded by the arresting law enforcement officer. The motor vehicle may be released to any licensed driver upon a showing of proof of insurance for the vehicle that was impounded and the notarized written consent for the release by the vehicle owner."

(Emphasis added.)

Section 7-601 of the Illinois Vehicle Code (625 ILCS 5/7-601

(West 1996)) provides, in pertinent part:

"§ 7-601. Required liability insurance policy.

(a) No person shall operate, register or maintain registration of, and no owner shall permit another person to operate, register or maintain registration of, a motor vehicle designed to be used on a public highway un

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less the motor vehicle is covered by a liability insurance policy.

* * *

"

Statutes are presumed to be constitutional, and any challenge to that presumption must clearly establish the statute's constitutional infirmity. (Fink v. Ryan (1996), 174 Ill. 2d 302, 308.) Moreover, when construing a challenged statute, the validity of the legislative enactment must be upheld if it is reasonably possible to do so. Wilson v. Department of Revenue (1996), 169 Ill. 2d 306, 310.

The standard for determining the propriety of an exercise of the police power is whether the statute in question is reasonably designed to remedy the evils which the legislature has determined to be a threat to the public health, safety and general welfare. (Heimgaertner v. Benjamin Electric Manufacturing Co. (1955), 6 Ill. 2d 152, 159.) The purpose of the mandatory insurance requirement is the protection of the public. State Farm Mut. Auto. Ins. Co. v. Universal Underwriters Groups (1997), 285 Ill. App. 3d 115, 120-121.

Numerous Illinois decisions have affirmed impoundments where the arrestee could not remove the vehicle, such as where the driver is the sole occupant and is legitimately arrested.

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(People v. Braasch (1984), 122 Ill. App. 3d 747, 752-753.)

Similarly, impoundment is appropriate when the car has been abandoned or was illegally parked (People v. Hundley (1993), 156 Ill. 2d 135, 136-139). Impoundment may be appropriate where no passenger has a valid drivers license (United States v. Covarrubias (7th Cir. 1995), 65 F.3d 1362; People v. McCoy (1995), 269 Ill. App. 3d 587, 589-593), or where all passengers have been legally arrested or are insufficiently sober to take charge of the automobile. (People v. Clark (1976), 65 Ill. 2d 169, 172.) Illinois law has, in fact, codified a policeman's authority to remove vehicles from the public way in subsection 11-1302(c)(3) of the Illinois Vehicle Code (625 ILCS 5/11-1302(c)(3) (West 1996)), which provides, in pertinent part:

" * * *

(c) Any police officer is hereby authorized to remove or cause to be removed to the nearest garage or other place of safety any vehicle found upon a highway when:

* * *

3. When the person driving or in control of such vehicle is arrested for an alleged offense for which the officer is required by law to take the person arrested before a proper magistrate without unnecessary delay."

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The seminal decision concerning the constitutionality of a vehicle impoundment is South Dakota v. Opperman (1976), 428 U.S. 364, 96 S. Ct. 3092. In that case, the Supreme Court noted that impoundment by the police may be in furtherance of public safety or community caretaking functions such as removing disabled or damaged vehicles, or automobiles which violate parking ordinances, and which thereby jeopardize both the public safety and the efficient movement of vehicular traffic. (South Dakota v. Opperman (1976), 428 U.S. 364, 368-369, 96 S. Ct. 3092, 3096-97. Accordingly, an impoundment must either be supported by probable cause, or be consistent with the police role as "caretaker" of the streets and completely unrelated to an ongoing criminal investigation. South Dakota v. Opperman (1976), 428 U.S. 364, 370, n.5, 96 S. Ct. 3092, 3097, n.5.

Subsection 6-303(e) of the Vehicle Code involves the violation of two separate provisions of the Illinois Vehicle Code: driving with a suspended or revoked license or permit and operating or permitting the operation of a motor vehicle that is not covered by a liability insurance policy. (625 ILCS 5/6-303(e) (West 1996); 625 ILCS 5/7-601 (West 1996).) The first statute is an absolute liability offense, and, thus, a mental

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state such as intent or knowledge is immaterial to the question of guilt. (People v. Stevens (1984), 125 Ill. App. 3d 854, 855; People v. Espenscheid (1969), 109 Ill. App. 2d 107, 111.) As to the second statute, section 7-601 of the Code provides that "[n]o person shall operate, register or maintain registration of, and no owner shall permit another person to operate, register or maintain registration of, a motor vehicle * * * unless the motor vehicle is covered by a liability insurance policy." (625 ILCS 5/7-601(a) (West 1996).) Any motor vehicle determined by the Secretary of State to be in violation of section 7-601 of the Code shall have its vehicle registration suspended, which in the case of a first violation is terminated upon payment by the owner of a reinstatement fee of \$100 and submission of proof of insurance. (625 ILCS 5/7-606 (West 1996).) Suspension of registration shall occur regardless of the fact that the vehicle was operated by someone other than the owner of the vehicle. (625 ILCS 5/7-606 (West 1996).)

Moreover, section 3-707 of the Illinois Vehicle Code (625 ILCS 5/3-707 (West 1996)) provides, in pertinent part:

"§ 3-707. Operation of uninsured motor vehicle-penalty. No person shall operate a motor vehicle unless the motor vehicle is

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covered by a liability insurance policy in accordance with Section 7-601 of this Code.

Any person who fails to comply with a request by a law enforcement officer for display of evidence of insurance, as required under Section 7-602 of this Code, shall be deemed to be operating an uninsured motor vehicle.

Any operator of a motor vehicle subject to registration under this Code who is convicted of violating this Section is guilty of a business offense and shall be required to pay a fine in excess of \$500, but not more than \$1,000. * * * (Emphasis added.)

Under sections 7-601 and 3-707 of the Code, motor vehicles must be covered by liability insurance, regardless of whether the owner or any other operator of the vehicle is driving. Moreover, this requirement that the motor vehicle be covered with liability insurance renders irrelevant the question of whether the operator may be personally covered by liability insurance. (See, e.g., Steinberg v. Universal Underwriters Ins. Co. (1995), 272 Ill. App. 3d 79, 84-85 (Cook, J., dissenting); "The uninsured owner of a vehicle cannot protect himself from liability under the mandatory insurance law by allowing the vehicle to be operated only by drivers who have their own insurance. The mere registration of an uninsured vehicle, even one which is never used, violates the law.") This interpretation is

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in accordance with section 7-601, which clearly states that "[n]o person shall * * * register or maintain registration of * * * a motor vehicle * * * unless the motor vehicle is covered by a liability insurance policy." (625 ILCS 5/7-601(a) (West 1996).) Therefore, since the mere registration of an uninsured vehicle is a violation of section 7-601, the owner is not an innocent party even if he or she was unaware that the suspended or revoked driver had taken possession of the automobile. The owner has a preexisting obligation to purchase insurance on any registered motor vehicle, an obligation that is unaffected by the status of its driver.

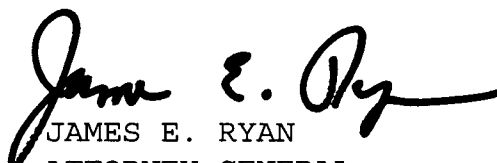
Under section 3-707, even a passenger with a valid driver's license would not be able to drive an uninsured vehicle legally, since to operate the vehicle at all would be a violation of section 7-601. Impoundment, therefore, is not only proper under subsection 6-303(e) of the Code, since an uninsured motor vehicle could not be legally removed or operated by anyone, but is a necessity. Consequently, because violation of subsection 6-303(e) presents circumstances in which neither the arrestee nor any other occupant of the vehicle could legally provide for its

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immediate removal, under the prevailing State and Federal case law there is the legal justification for impounding the vehicle.

Based upon the foregoing, it is my opinion that subsection 6-303(e) of the Illinois Vehicle Code, is constitutional and enforceable as written.

Sincerely,



JAMES E. RYAN
ATTORNEY GENERAL