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FILE NO. S-796

**MOTOR VEHICLES:  
Authority to Hold Suspension  
Hearing Under Implied Consent  
Statute**

Honorable Michael K. Grabowski  
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Courthouse  
Pinckneyville, Illinois 62274

Dear Mr. Grabowski:

I have your letter wherein you state in part:

"If a person is arrested and cited for driving while intoxicated and upon request refuses to consent to a breath test under the Implied Consent Law and if thereafter the DWI charge is either dismissed or reduced prior to a suspension hearing under Section 11-501.1, is it proper to proceed with the suspension hearing when the DWI charge has been dismissed or reduced?"

Section 11-501.1(a) of the Illinois Vehicle Code

(Ill. Rev. Stat. 1973, ch. 95 1/2, par. 11-501.1(a)), provides  
in pertinent part:

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"Any person who, after September 30, 1972, drives a motor vehicle anywhere within this State thereby consents, under the terms of this Section, to take and complete a test or chemical analysis of his breath to determine the alcoholic content of his blood when made as an incident to and following his lawful arrest, evidenced by the issuance of a Uniform Traffic Ticket, for an offense as defined in Section 11-501 of this Act or a similar provision of a municipal ordinance.  
\* \* \*

Section 11-501.1(a) of the Illinois Vehicle Code, supra, further provides that, within a reasonable time following any such arrest, a police officer shall request the person arrested to submit to an analysis of his breath. The officer is also required to make an oral statement and concurrently deliver to the arrested person a printed notice. The oral statement and printed notice must, among other things, advise the arrested person that he may refuse to submit to an analysis of his breath and that his refusal may result in the suspension of his privilege to operate a motor vehicle. (Ill. Rev. Stat. 1973, ch. 95 1/2, par. 11-501.1(a)(2).) If the arrested person refuses to submit to the test, the arresting officer is required to file with the clerk of the circuit court for the

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county in which the arrest was made a sworn statement naming the person refusing to take and complete the test. (Ill. Rev. Stat. 1973, ch. 95 1/2, par. 11-501.1(d).) The court clerk is then required to notify such person in writing that his privilege to operate a motor vehicle will be suspended unless, within 28 days from the date of mailing of the notice, he shall request a hearing. (Ill. Rev. Stat. 1973, ch. 95 1/2, par. 11-501.1(d).) If such hearing is not requested, the arrested person's driver's license is automatically suspended. Ill. Rev. Stat. 1973, ch. 95 1/2, par. 11-501.1(d).

In regard to the suspension hearing itself, section 11-501.1(d) of the Illinois Vehicle Code (Ill. Rev. Stat. 1973, ch. 95 1/2, par. 11-501.1(d)), provides:

"\* \* \*

If such person desires a hearing, he shall petition the Circuit Court for and in the county in which he was arrested for such hearing. Such hearing shall proceed in the Court in the same manner as other civil proceedings, except that the scope of such proceedings shall cover only the issues of whether the person was placed under arrest for an offense as defined in Section 11-501 of this Act or a similar provision of a municipal ordinance, whether the arresting officer had reasonable

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grounds to believe that such person was driving while under the influence of intoxicating liquor, whether the person was informed orally and in writing as provided in paragraph (a) that his privilege to operate a motor vehicle would be suspended if he refused to submit to and complete the test and whether, after being so advised, he refused to submit to and complete the test upon request of the officer.

\* \* \* \*

It is my opinion, for the reasons which follow, that the circuit court is not deprived of jurisdiction as to the civil proceeding for suspension of license just because the criminal charge of driving while intoxicated has been dismissed or reduced.

First, the suspension hearing and the hearing to consider the charge of driving while intoxicated are separate and distinct proceedings. A proceeding in regard to the statutory offense of driving while intoxicated is criminal in nature.

(Ill. Rev. Stat. 1973, ch. 95 1/2, par. 11-501(i).) A proceeding for the suspension of a driver's license is civil and administrative in character. Haswell v. Powell, 38 Ill. 2d 161, appeal dismissed, 390 U.S. 712.

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In addition, the respective proceedings involve different issues. In a prosecution for driving while intoxicated, the State must prove beyond a reasonable doubt that the defendant was actually intoxicated while operating a motor vehicle. (People v. Miller, 23 Ill. App. 2d 352; People v. Chambers, 8 Ill. App. 3d 1036.) In a suspension hearing pursuant to section 11-501.1(d) of the Illinois Vehicle Code, supra, the crucial issue is whether the arresting officer had reasonable grounds to believe that the arrested person was driving while under the influence of intoxicating liquor.

Secondly, the general rule under analogous implied consent statutes in other jurisdictions is that post facto criminal developments after a lawful arrest have no bearing on the action which must be taken in the suspension or revocation proceeding. It has been so held even though the arrested person has plead guilty to the criminal charge, (Ziemba v. Johns, 183 Neb. 644, 163 N.W. 2d 780) or has been acquitted of the criminal charge. State, Dept. of Highways v. Styrbicki, 284 Min. 18, 169 N.W. 2d 225; Com., Dept. of Transp., Bureau of Traffic

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Safety v. Clawson, 9 Pa. Cmwlth 87, 305 A. 2d 732; Fritz v. Dept. of Motor Vehicles, 6 Wash. App. 233, 492 P. 2d 558.

Your question, however, is limited to the situation where the criminal charge of driving while intoxicated is either dismissed or reduced. It has been held, under analogous implied consent statutes in other jurisdictions, that a driver's license can still be revoked or suspended even though the criminal charge of driving while under the influence of intoxicating liquor has been dismissed by the court without a hearing. State, Dept. of Highways v. Olsen, 284 Min. 22, 169 N.W. 2d 227; Smestad v. Ellingson, 191 N.W. 2d 799 (N.D. 1971); Bureau of Traffic Safety v. Everett, 8 Pa. Cmwlth. 502, 303 A. 2d 850.

In Bowers v. Hults, 42 Misc. 2d 845, 249 N.Y.S. 2d 361, a case particularly relevant to your question, a driver was arrested for driving while intoxicated and refused to take the chemical test. The charge was later reduced to public intoxication, a violation of municipal ordinance. Ultimately, the charge of public intoxication was dismissed, and the driver pleaded guilty to a minor violation of the traffic laws. Subsequent to the criminal proceeding, a motor vehicle hearing

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was held, and the driver's license was revoked pursuant to statute for refusal to submit to the chemical test. The applicable implied consent statute, like the Illinois statute, provided that a chemical test be administered at the direction of a police officer having reasonable grounds to believe such person to have been driving in an intoxicated condition.

In upholding the license revocation even though the criminal charge of driving while intoxicated had been dismissed, the court said at page 364:

"The post facto developments, after a lawful arrest under the Vehicle and Traffic Law, §1193, viz-a-viz pleading guilty to lesser offenses, conviction or acquittal, after trial on the same or a different crime, have no bearing on the action which the Commissioner must take under the provisions of Vehicle and Traffic Law, §1194, subd. 1. \*\*\*

The same motor vehicle accident may give rise to two separate and distinct proceedings. One, a civil and administrative licensing procedure instituted by the Motor Vehicle Commissioner to determine whether a person's privilege to drive shall be revoked; the other, a criminal action, instituted by the People in the appropriate Court to determine whether a crime has been committed. Each proceed independently of the other, the outcome of one action is of no consequence in the other."

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Even though your question is limited to the situation where the criminal charge is either dismissed or reduced, the general rule, as indicated above, is that a suspension or revocation hearing can be held even though the driver has been acquitted in the criminal proceeding. Thus, in answer to your question, it is my opinion that the acquittal, dismissal, or reduction of the criminal charge of driving while intoxicated does not deprive the circuit court of jurisdiction as to the civil proceeding for suspension of license.

Very truly yours,

A T T O R N E Y G E N E R A L