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STATE OF NEBRASKA
OFFICIAL
JUL 27 1992
DEPT. OF JUSTICE

DATE: July 17, 1992

SUBJECT: Whether the Department of Motor Vehicles must comply with the order of a County Court: (1) reversing an administrative license suspension by the Department pursuant to Neb.Rev.Stat. §60-4,100 (1991 Supp.) because of clerical error by the County Court; (2) ordering the Department to waive the $50 license reinstatement fee provided in §60-4,100 for the traffic citation against an individual in which the Department was not a party.

REQUESTED BY: Jack C. Conrad, Director
Nebraska Department of Motor Vehicles

WRITTEN BY: Don Stenberg, Attorney General
Paul N. Potadle, Assistant Attorney General

ANSWER: Yes. A County Court, as a result of clerical error by the County Court, may vacate an administrative suspension order by the Nebraska Department of Motor Vehicles, and the Department is required to waive the $50.00 reinstatement fee provided by Neb.Rev.Stat. §60-4,100 (1991 Supp.) if ordered to do so by a County Court.

The facts presented by the Department, for this opinion, are that an individual's license was suspended by the Department pursuant to Neb.Rev.Stat. §60-4,100 (1991 Supp.) for failure to comply with a traffic citation. A Failure to Comply Notice was issued by the County Court and sent to the Department. After the Department's administrative suspension, the Court issued an order reversing the Department of Motor Vehicles' administrative suspension due to clerical error by the Court and no error by the individual. The Court ordered the Department to waive the $50 reinstatement fee as provided in §60-4,100.

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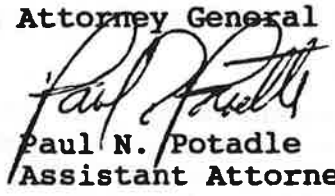
In general, courts lack jurisdiction to interfere with public offices or agencies who are exercising their administrative duties, provided they remain within the scope of the authority granted to them. However, in Watson Bros. Transportation Co. v. Red Ball Transfer Co., 159 Neb. 448, 452, 67 N.W.2d 475, 478 (1954), the Supreme Court stated that courts shall review or interfere with administrative actions only when it is necessary in order to keep the body within its jurisdiction and protect legal and constitutional rights. From the facts presented, it was the clerical error of the Court that generated the failure to comply notice that resulted in the administrative suspension by the Department.

The Supreme Court held in Moackler v. Finley, 207 Neb. 353, 357, 299 N.W.2d 166, 168 (1980), that "[o]ur law is clear that a court has inherent power to vacate or modify its own judgments at any time during the term at which those judgments are pronounced, and such power exists entirely independent of any statute." In addition, Neb.Rev.Stat. §25-2001(3) (Reissue 1989) provides that a district court shall have the power to modify or vacate its own judgments when such orders or judgments were made for mistake, neglect, or omission of the clerk. Neb.Rev.Stat. §25-2009 (Reissue 1989) states that the provisions of the chapter shall apply to the county court as may be applicable to the judgments or final orders of the court.

As a result, because of the County Court's error and the Court's ability to modify or vacate its own judgment, the Department may be ordered by the County Court to reverse the administrative license suspension by the Department and waive the $50.00 license reinstatement fee provided in §60-4,100.

Sincerely yours,

DON STENBERG
Attorney General



Paul N. Potadle
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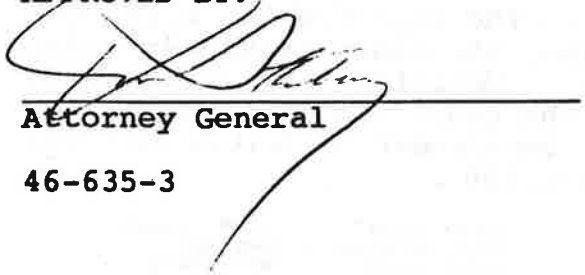

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