

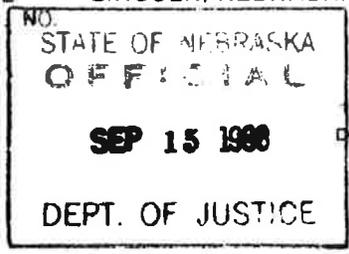
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DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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#88039



ROBERT M. SPIRE  
Attorney General  
A. EUGENE CRUMP  
Deputy Attorney General

DATE: September 8, 1988

SUBJECT: Point Assessment for Colorado DWAI

REQUESTED BY: Margaret L. Higgins, Director  
Department of Motor Vehicles

WRITTEN BY: Robert M. Spire, Attorney General  
David Edward Cygan, Assistant Attorney General

Your department has requested an opinion regarding the appropriate treatment of abstracts of convictions in the State of Colorado for Driving While Ability Impaired (DWAI) in regard to the department's point assessment pursuant to the Driver License Compact.

The Driver License Compact, Second Status Report of 1968 states on page 2, that:

The agreement involves three major commitments:

1. Exchange of certain traffic reports of out-of-state drivers with the home state licensing agency.
2. Action by the home state upon its own licensed drivers to give the same effect to conduct reported on out-of-state violations as if the violation had occurred within its own borders.
3. Use of the one-license concept whereby the state requires surrender of an out-of-state driver's license prior to issuance of a license within its own jurisdiction. (Original emphasis.)

On page 4 the status report reiterates its emphasis on conduct in its discussion of the lack of uniformity surrounding the laws and enforcement of speeding violations. "The Driver License Compact clearly states that action by the state shall be upon the 'conduct' of the violator and shall be the same as that which they would take if the violation occurred within its own borders." Therefore, by analogy, the same principles of conduct must be applied to a lack of uniformity in driving while intoxicated statutes.

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Margaret L. Higgins, Director  
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Colo. Rev. Stat. §42-4-1202(2)(b) provides for a class of offense known in Colorado as Driving While Ability Impaired. This offense encompasses individuals who have been driving with an alcohol content between 0.05% and 0.10% as indicated by chemical test. This is a lesser offense than Colorado's Driving While Intoxicated (DWI) which envelops drivers with an alcohol content greater than 0.10% by chemical test.

Nebraska, on the other hand, has no comparable offense to Colorado's DWAI. The closest corresponding offense in Nebraska is Neb. Rev. Stat. §39-669.07, Driving Under the Influence of Alcohol (DUI) as determined by a chemical test of .10% or greater, which is analogous to Colorado's DWI.

Therefore, any individual whose conduct was such that he was operating a motor vehicle in Nebraska with an alcohol content between .05% and .10% as indicated by chemical test would not be cited for DWI by the State of Nebraska, even though this same conduct when executed in Colorado, would merit a conviction for DWAI by the State of Colorado.

The Director of the Department of Motor Vehicles, when in receipt of an abstract of conviction from Colorado cannot determine from the face of the abstract of conviction what other conduct occurred surrounding the offense. The one conclusion that is clear is that the conduct was not driving with an alcohol content greater than .10, the standard in Nebraska for DUI. Therefore, the Director may not assess the points associated with a Nebraska DUI conviction for a Colorado conviction of DWAI, but only for a Colorado conviction of DWI. Pursuant to the intent of the drafters of the Driver License Compact, the conduct which gives rise to a Colorado conviction for DWAI, does not merit any point assessment by the Director in the absence of a corresponding Nebraska offense.

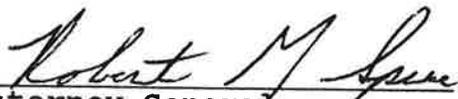
Sincerely,

ROBERT M. SPIRE  
Attorney General



David Edward Cygan  
Assistant Attorney General

32-42-2  
APPROVED BY:

  
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