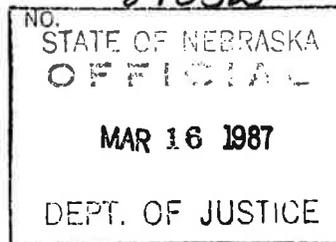


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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87032



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

DATE: March 3, 1987

SUBJECT: School Permit and Learner's Permit Violations
under Neb.Rev.Stat. §60-407 et seq.

REQUESTED BY: David Arterburn
Red Willow Deputy County Attorney

WRITTEN BY: Robert M. Spire, Attorney General
Yvonne E. Gates, Assistant Attorney General

Pursuant to our phone conversation of February 25, 1987, we have researched the issue of whether the remedy for violation of a learner's permit provided by §60-409.05 applies equally to violations of a school permit. It is our opinion that it does not.

Persons 14 years old and over pursuant to §60-407(2) may obtain a learner's permit valid for only two months and a school permit. Persons 15 years old and over pursuant to 60-407(4) may obtain a learner's permit valid for twelve months. Section 60-407 (3) provides in part "[a]ll licenses, and limited permits issued pursuant to subsection (2) of this section, shall be subject to revocation under the terms of section 60-427 and any person who violates the terms of such license or limited permit shall be deemed guilty of a Class III misdemeanor."

Upon conviction of any violation §60-427 specifies ". . . the judge of such court may, in his discretion, suspend the license of such convicted person to operate a motor vehicle for any purpose for a period of time not less than ten days nor more than one year, unless a greater period of suspension or revocation be made mandatory by other provisions of law, or may impound the license for a period of not more than ninety days and order that such person not operate a motor vehicle during the period such license is impounded. . . ."

A more severe penalty is mandated by §60-409.05 for a specific violation of the learner's permit. It applies to any individual driving under the 2 month or 12 month learner's permit. Whenever such individual operates a motor vehicle without being accompanied by a licensed operator 19 years old or over actually in the seat beside the driver, the court is to

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March 3, 1987
Page -2-

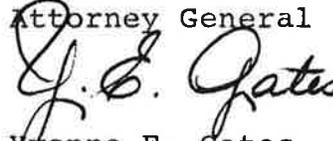
revoke the permit and not allow the individual to receive any type of license or permit until he or she is 16 years of age. Section 60-409.05 specifically says "learner's permit," it does not mention school permits.

The legislative history of this section reveals that the introducer of the bill, Senator Bahensky, was asked directly about school permits. He replied: "This would in no way affect the school driver's permits. It's only on the learner's permit and they have to at all times be accompanied by an adult with a valid driver's license." Floor Debate LB 478, Seventy Third Legislature (1963).

Therefore, we conclude that where the violation does not involve the accompanying adult requirement, §60-427 controls both types of permits; yet, where the accompanying adult requirement is violated, learner's permits are subject to the §60-409.05 remedy and school permits are subject to the §60-427 remedy.

Sincerely yours,

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APPROVED BY:


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