

**OPINION
61-152**

February 27, 1961 (OPINION)

MOTOR VEHICLES

RE: Operator's Licenses - Rescinding of Order Suspending
Driving Privileges

Your letter dated February twenty-third, 1961, requesting an opinion concerning the authority of the State Highway Commissioner to rescind an order of suspension of driving privileges, is herewith acknowledged.

We have checked the files maintained by the Safety Responsibility Division of the State Highway Department concerning the driver with which you are concerned, and find that this driver was involved in an automobile accident on January fourteenth, 1960, and another accident on September third, 1960, and that pursuant to the provisions of section 39-16-05 of the North Dakota Century Code, an order of suspension of driver's license for failure to deposit sufficient security or to otherwise comply with the requirements of law, the operator's license was suspended and such license was ordered to be surrendered. Thereafter the file indicates that the driver filed a release concerning the accident of September third, 1960, and one year having elapsed following the accident of January fourteenth, 1960, without any action for damages being instituted, two orders of rescission were entered on the tenth day of February, 1961 relating to each of the orders of suspension, pursuant to authority of section 39-16-07.

The term "rescind" is described in 77 Corpus Juris Secundum, 276, as "the term sometimes conveys a retroactive effect, and may be applied to a variety of transactions, such as a vote, a transfer of property, or a contract. The term does not always and necessarily mean strictly the same as revoke, annul, or blot out and it is often, and not improperly, used to mean cutting off, and leaving the parties in the exact condition then existing. It may mean to restore parties to their former positions, and it may be employed in the narrower sense of terminate with respect to future transactions, and it is used in some cases to indicate partial rescission or termination, and in others to indicate annulment ab initio."

The act of executing an order of rescission by the Highway Commissioner or his duly authorized agent, being pursuant to the authority specified in section 39-16-07 in the instant case, obviously the word "rescission" cannot be construed as having any retroactive effect and can only have the effect of a release from suspension as indicated in the title of such section.

It is therefore the opinion of this office that the order by the Highway Commissioner can have no effect insofar as operating to dismiss criminal proceedings arising out of action by the driver during the period when an order of suspension was in effect.

You have also asked whether there is an actual suspension of the license until the license is surrendered. A license is a privilege and the document or card issued by the Commissioner is only evidence of the privilege. The order of suspension is effective when notice thereof is given to the driver. Subsection 1 of section 39-06-40 of the North Dakota Century Code makes it a misdemeanor for a person to retain in his possession a canceled, revoked or suspended license.

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