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THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

RE: Idaho Code § 18-1502

Dear Mr. Wood:

By letter dated July 15, 1991, you requested an opinion from this office regarding Idaho Code § 18-1502(d). This provision authorizes a court to suspend for one year the driver's license of a minor who is found guilty of alcohol offenses unrelated to the operation of a motor vehicle. Your question is whether this office continues to adhere to our previous Attorney General Opinion that concluded that this statute was unconstitutional.

In 1983 the Idaho Legislature amended Idaho Code § 18-1502(c) to provide:

The department of transportation shall suspend the operator's license or permit to drive and any non-resident's driving privileges in the State of Idaho for sixty (60) days of any person under nineteen (19) years of age who is found guilty or convicted of violating the law pertaining to the use, possession, procurement, attempted procurement or dispensing of any beer, wine or any other alcoholic beverage

In 1984 this office issued Attorney General Opinion 84-5 stating that this provision was unconstitutional because, among

other things, it failed to provide minimum safeguards of procedural due process. In particular, the statute did "not provide for notice or hearing before a license is suspended" by the Department of Transportation. 1984 Attorney General Opinion at 53.

Idaho Code § 18-1502(c) was amended by the Idaho Legislature in 1989 and 1990. Idaho Code § 18-1502(d) now provides:

Whenever a person pleads guilty or is found guilty of violating any law pertaining to the possession, use, procurement, attempted procurement or dispensing of any beer, wine, or other alcoholic beverage, and such person was under eighteen (18) years of age at the time of such violation, then in addition to the penalty provided in subsection (b) of this section:

(1) The court shall suspend the person's driving privileges for a period of not more than one (1) year. The person may request restricted driving privileges during the period of suspension, which the court may allow, if the person shows by a preponderance of the evidence that driving privileges are necessary as deemed appropriate by the court.

Thus, the statute as amended provides for a hearing before the person authorized to suspend the license and also permits a hearing in order to obtain restricted driving privileges during the period of suspension. This amendment cures the procedural due process infirmity noted in Attorney General Opinion 84-5.

The 1984 opinion also indicated that the law as it then stood might suffer from substantive due process and equal protection deficiencies:

Because of the lack of a rational relationship between driving or driving privileges and the state's interests in prohibiting a minor's non-traffic possession, procurement, or use of an alcoholic beverage, Idaho Code § 18-1502(c) requiring suspension of driving privileges for teenagers convicted of liquor offenses is unconstitutional on equal protection grounds and probably on substantive due process grounds as well.

Nothing in the 1989 or 1990 amendments to this statute serves to cure what was identified as "the lack of a rational relation" between the penalty of denying driving privileges and the crime of possession, use, procurement, attempted procurement or dispensing of any beer, wine or other alcoholic beverage.

Subsequent to the issuance of Attorney General Opinion No. 84-5, however, the Court of Appeals of Oregon addressed the constitutionality of an Oregon statute similar to Idaho Code § 18-1502. State v. Day, 733 P.2d 937 (1987). In concluding that a rational relationship did exist between the penalty imposed and the state interest for imposing the penalty, the Oregon court stated:

The legislative history reveals that the law was intended to meet two goals: deterrence of drug and alcohol possession and use among young people and promotion of highway safety. Both goals are legitimate. The legislature considered the sanction appropriate to meet these goals because of the lack of other meaningful penalties for the group and the recognition that driving is a privilege young people do not want to lose.

733 P.2d at 938-39. Similarly, in Commonwealth v. Strunk, 582 A.2d 1326 (1990), the Superior Court of Pennsylvania construed a similar statute and concluded that the lack of other meaningful penalties against minors justified the sanction. A strongly worded dissent argued that the legislature had acted arbitrarily in suspending driving privileges as a penalty for underage possession of alcoholic beverages.

In sum, the conclusions reached in Attorney General Opinion 84-5 are superseded by those in this guideline. The procedural due process problems identified in 1984 have been cured by the 1989 and 1990 amendments to Idaho § 18-1502(c). The substantive due process and equal protection problems have not been addressed by subsequent legislatures, but similar statutes have been upheld by courts in Oregon and Pennsylvania against similar constitutional attacks. Unfortunately, neither court has persuasively articulated a rational relationship between the state's valid goal of enforcing statutes dealing with underage drinking and the chosen penalty of suspending driving privileges.

It is our conclusion, in light of these two decisions, that Idaho § 18-1502(c) is not clearly unconstitutional and that its penalties should be enforced unless and until they are successfully challenged.

Yours very truly,



JOHN J. McMAHON
Chief Deputy