Traffic hearing officers, authority

Number: INFORMAL

Date: December 13, 2006

Mr. Tegan Slaton
Traffic Magistrate
415 Eaton Street
Key West, Florida 33040

Dear Judge Slaton:

Thank you for contacting the Florida Attorney General's Office regarding the effect of recent legislative changes to section 318.32(1), Florida Statutes, and your authority under section 322.26(8), Florida Statutes. Attorney General Crist has asked me to respond to your letter.

Section 318.32, Florida Statutes, provides the jurisdiction of and limitations on traffic hearing officers. The section provides that these hearing officers are empowered to "adjudicate or withhold adjudication of guilt in the same manner as a county court judge" with certain specific exceptions. Among those exceptions is a prohibition that hearing officers shall not "have the power to suspend a defendant's driver's license pursuant to s. 316.655(2)."[1] As this office concluded in an Informal Attorney General's Opinion dated October 21, 2005, "I cannot say that the amendment of section 318.32(1)(d), Florida Statutes, to preclude a traffic hearing officer from suspending a defendant's driving licenses also includes a prohibition against a traffic hearing officer revoking a driver's license." Thus, it has been the position of this office that the language of section 318.32(1)(d), Florida Statutes, does not address a hearing officer's authority to revoke a driver's license.

Section 322.26, Florida Statutes, provides for the mandatory revocation of driver's licenses by the Department of Highway Safety and Motor Vehicles. Included within the enumerated convictions that may result in the revocation of the license or driving privilege of a person under this section is the

"[c]onviction in any court having jurisdiction over offenses committed under this chapter or any other law of this state regulating the operation of a motor vehicle on the highways, upon direction of the court, when the court feels that the seriousness of the offense and the circumstances surrounding the conviction warrant the revocation of the licensee's driving privilege."

Thus, the statute authorizes a court to advise the Department of Highway Safety and Motor Vehicles of convictions, in addition to those specifically enumerated in section 322.26, Florida Statutes, that the court determines would warrant license revocation. This section does not independently authorize a court to revoke the driving privilege of any driver; rather, it expands those offenses for which the department may revoke a license or driving privilege.[2] I would note that, for purposes of Chapter 322, Florida Statutes, the term "court" is defined as "any tribunal in this state or any other state, or any federal tribunal, which has jurisdiction over any civil, criminal, traffic, or administrative action."[3] This would appear to include a traffic hearing

officer or a traffic magistrate.

Thus, section 322.26(8), Florida Statutes, continues to authorize the Department of Highway Safety and Motor Vehicles to revoke a driver's license or driving privileges of a person who has been convicted of an offense "when the [traffic magistrate] feels that the seriousness of the offense and the circumstances surrounding the conviction warrant the revocation of the licensee’s driving privilege" and has so directed the department.

This informal Attorney General's Opinion was prepared in an effort to be of assistance to you. The conclusions contained herein are those of the writer and do not constitute a formal Opinion of the Attorney General.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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1 Section 318.32(1)(d), Fla. Stat.

2 *See, e.g., Simmons v. State*, 767 So. 2d 666 (Fla. 1st DCA 2000); *Hughes v. State*, 578 So. 2d 50 (Fla. 2nd DCA 1991).

3 Section 322.01(11), Fla. Stat.