

DRIVER LICENSING LAW: HELP OR HINDRANCE?

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Discussions of the law in the field of driver licensing frequently generate more heat than light. However, we are seeking perspective and direction for the future in terms of the contribution of law to safer highway transportation.

HISTORY OF DRIVER LICENSING

When the new breed of highway users took to the streets in the early days of automotive transportation, there were those who felt that some regulation should be imposed on them, since motor vehicles occasionally frightened horses and got into accidents.

Unfortunately this early thinking, if any, tended to be negative. So the driving license started out as a receipt for the payment of a small tax by the motorist for the privilege of operating his vehicle. In some places, the local hardware store provided this handy tax service. But, with the revenue aspects of licensing firmly established, it was only a matter of time before the early tax receipt became a sophisticated document, which today serves as a status symbol for teenagers, a convenient identification for cashing checks, and a mechanism that helps control problem drivers, whoever they may be!

Average driving license fees have not kept pace with inflation, perhaps because those empowered to raise these fees do

not readily equate the level of the fee with the value or cost of the services performed by the function. It is perhaps ironic that the driving license is often less costly than a hunting license, and, whether by accident or design, one of the results of their use is on occasion the same: death.

I suspect that we still think of a driving license as a form of tax rather than as a means for performing important safety services for the motoring public. Only when threatened do its possession and value become apparent to the average driver. But, even then, the loss of a license does not seem to be too threatening, inasmuch as a great number of drivers operate their cars without a license or with a suspended or revoked license. The seeming lack of public concern for this situation suggests to me that the licensing function really is not that important in the public mind.

This is not to suggest that the service aspects of the function have been neglected. On the contrary, today's licensing encompasses concepts for driver improvement, rehabilitation, and related efforts to assist the driver to do a better job behind the wheel. Indeed, the future direction and perhaps even salvation of driver licensing will be tied to its ability to provide essential safety services that will benefit both the individual driver and the public.

The courts have laid to rest the classic

debate over whether a driving license is a right or a privilege. Ask the administrator who is holding hearings on suspension and revocation orders or the motor vehicle department counsel who is defending the rules and regulations in court. The idea of a benign sovereign granting the driver a privilege that can be withdrawn with impunity is fast becoming part of history, although the word privilege still has some currency in discussions on the subject.

HELP OR HINDRANCE

The title of this paper is ambiguous because I am not sure whether driver licensing law is a help or a hindrance. I will illustrate my uncertainty by commenting briefly on four points that bother me, among others of course.

Licensing Legislation

Driver licensing is a creature of statute and therefore legislative in inception. Implicit in the legislative process is the role of the protagonist who wants a particular law, the antagonist who does not, and the legislative function that somehow strikes a balance between these conflicting interests.

The chief protagonist in driver licensing frequently is the motor vehicle administrator, who believes that he needs additional legal authority to do the kind of job that he thinks should be done. He is aided to an extent by safety-oriented organizations and groups and, in more recent times, by pressures emanating from the federal government's implementation of the Highway Safety Act of 1966. The antagonists range from those with interests that might be affected by change to those with sincere convictions. Both protagonists and antagonists abound in legislatures. The protagonists frequently lose the battle.

An underlying reason for defeat is that the legislators do not believe that the proposal will do the job; this lack of belief—perhaps credibility or even faith—is the result of poor communications between sides. I take little comfort in the old excuse that legislators do not want to spend money and therefore turn down good proposals. My state and local tax bills tell me differently. And if I had to point the finger at the side that fails to do a good communications job, I would turn toward the protagonist.

So, in a sense, the legislative process itself is a hindrance to more effective driver licensing. We could reverse this situation if we could convince legislators to give broader discretionary authority to the administrator, with minimal legal constraints. I like to think of driver licensing as a continuing relationship between the administrator and the public—a relationship that calls for understanding, sensitivity, trust, and a host of other things that are impossible to legislate. Whereas this may smack of idealism, I see this relationship as a partnership in which both partners are working toward common goals.

Suspension and Revocation

It is difficult to decide whether suspension and revocation laws are of any help, and I suspect that they often are a hindrance. Licensing is a way of ensuring that properly qualified persons are licensed, unqualified persons are helped in their efforts to meet standards, and disqualified persons are effectively kept off the road. The trouble is that the disqualification element gets the greatest exposure, while the other aspects of licensing are frequently misunderstood or perhaps unknown.

A comparative study of state laws on suspension and revocation of driving licenses showed that every state has its own ideas on how suspension and revocation should be applied but that they give less concern to what should be done to errant drivers once suspended or revoked. Perhaps in the future these procedures will be viewed as trigger mechanisms for subsequent remedial action aimed at improved safety through upgraded driving performance and not as an end in themselves.

Point System

Does the existence of a point system suggest that the administrator is less than secure in the exercise of his discretionary powers? Or does it suggest that the legislature wants to make sure that the administrator does not become overzealous in his license removal power? I suspect that a little of both comes close to reality. Maybe our national obsession with point spreads in athletic events makes points an acceptable element of the licensing game as well. I find it difficult to explain why similar offenses have different point values and consequences in different states. Again past research seems to suggest that point systems are more an exercise of parochial judgment than useful tools for evaluating driver performance.

The Nature of Law

Once a statute is on the books, it is difficult to change or remove—which of course is good in one sense, bad perhaps in another. My point is that the administrator loses a good deal of flexibility and incentive to try innovative approaches when everything he does involves the protagonist-antagonist conflict I mentioned earlier.

Interestingly enough, Reese (1) suggests that administrators already have the needed discretionary power to do many of the things they now feel must be reduced to legislation. He suggests that the power to promulgate rules administratively is an important and available tool but that it is not being used enough by the motor vehicle administrators. He says a great number of other things that are of interest and concern to anyone involved in this field.

FUTURE OF DRIVER LICENSING

The following are a few comments on what I hope the future holds for driver licensing law in terms of highway safety.

1. More discretionary power should be given to the administrator of the licensing function, and he should make more effective use of powers he already has.
2. Driver licensing should be less involved in legislation per se and the power exercised thereby. And it seems to work pretty well.
3. Better communication between the legislature and the administrator would overcome credibility gaps and foster cooperation in the creation of needed legal authority.
4. Better communication should be established between the administrator and the public on what the law is, and why. People might be receptive to the idea that these laws are not designed to hinder their freedom of mobility, but are designed to help ensure that they can exercise this freedom in safety for themselves and their loved ones.
5. More research should be conducted to validate practices and procedures before they get locked into the system. If they have a safety payoff, wonderful; if they do not, try something else. How many records are kept around the country just because someone once thought that this information would be useful? And now the records keep piling up even though their usefulness is long past.

Everyone is presumed to know the law. Rules of the road are law, and there is probably no body of law more essential to daily survival in our automotive society. To ensure that people understand the law, motor vehicle departments translate the law into attractive manuals, heavy with graphic art and loaded with simple language. The media can intelligently inform people on everything from tooth decay to interplanetary travel. When do we start using some of these proven techniques to tell people why and how their driver licensing system is helping and not hindering them?

REFERENCE

1. Reese, J. H. Power, Policy, People: A Study of Driver Licensing Administration. HRB Spec. Rept. 123, 1971.

Discussion

Frederick E. Vanosdall, Michigan State University

Driver licensing law is rarely presented well and interestingly. Perini, however, displays an understanding and knowledge of the function and law indicating his experience and study of this field. The history of driver licensing as a revenue-gathering mechanism seems to be perpetuated by driver licensing agencies and legislatures. As Perini points out, a driving license has public uses other than its proof of the holder's driving qualifications. For many license holders the true value is not fully understood nor held in high regard unless it is threatened.

Perini stresses four areas of concern: the administrator's tendency to advocate the need for more law to do what he thinks is needed; exaggerated use of license suspension and revocation; point systems as a basis for evaluating driver performance; and the nature of law.

He suggests development and use of administrative policy; improved understanding of the legislative process and development of public policy; establishment of public understanding, confidence, trust, and mutual partnership; and development of programs with remedial treatment in place of punishment. These needs may very well be essential if more responsible programs for licensing and control of qualified drivers are to be achieved.

Perini implied in various ways the increasing need for administrators to document and prove the reasonableness of, or scientific support for, standards in driver examinations provided for in existing policies.

Of Perini's future needs, the most beneficial method by which to achieve desired improvements may be to select competent personnel to staff programs to improve public, legislative, and professional regard for driver licensing programs. Efforts to establish these regards must make use of the professional media, as Perini suggests.

Future programs may progress more rapidly and meet public program objectives more proficiently under strong administrative programs. From Perini's views, administrators should establish good relations with the legislature to gain support for testing alternative programs developed through research projects to replace existing and rigid laws and public policy.