

April 22, 1966.

Honorable J. Millard Tawes
Governor of Maryland
State House
Annapolis, Maryland

Re: Senate Bill 376

Dear Governor Tawes:

At your request, we have reviewed Senate Bill 376 which was passed at the regular session of the General Assembly.

The Bill, which is in the form of an addition to the Motor Vehicle laws, is adequately described in its title as

“ . . . requiring lifetime revocation of operator’s and chauffeur’s license of any person convicted of a third offense pertaining to driving while under the influence of drugs or intoxicants, or under federal law, the law of any other state or a valid ordinance of any city, town or county of this State and permitting review of such revocation after a period of years.”

We have no doubt that such legislation (as so expressed) is not only constitutional but also a most salutary and long-overdue safeguard to the users of the State’s highways. It is therefore with the greatest reluctance that we have reached the conclusion that the text of the bill establishes a procedure which is unconstitutional.

After providing that the Department of Motor Vehicles “shall forthwith revoke and not thereafter reissue” the operator’s or chauffeur’s license of any person who has been convicted of three violations of laws proscribing driving while under the influence of drugs or alcoholic beverages, the section to be enacted by the Bill concludes with this sentence:

“At the expiration of ten years from the date of revocation . . . such person may petition any court of record having criminal jurisdiction in the county or city wherein such person resides, and for cause shown, said license may in the discretion of the court be restored on such terms and conditions as the court may prescribe.”

It can immediately be seen that, whether viewed as the issuance of a new license or as a reinstatement of the old, this provision seeks to confer upon the judiciary a function otherwise conferred upon the Department of Motor Vehicles. *Code* (1957 Edition), Article 66½, Sections 86—108. Of some significance also is the fact that none of the limitations, guides or standards imposed upon the Department by those sections—indeed no limitations, guides or standards of any sort—appear to be imposed upon the criminal court.

In a number of decisions, the Court of Appeals has held that the attempted conferral of primary licensing authority upon the judiciary is unconstitutional. *Cromwell v. Jackson*, 188 Md. 8 [liquor license]; *Close v. Southern Md. Agr. Asso.*, 134 Md. 629 [gambling license]. Inferential support for this holding has been seen in cases holding invalid attempts to empower courts to call elections (*Board of Supervisors v. Todd*, 97 Md. 247) and to ap-