

W. F. EWTON, Chief of Driver Control
Section, Arkansas Department of Finance and
Administration, Revenue Division *v.*
Bernard J. BERG

79-181

587 S.W. 2d 26

Opinion delivered October 1, 1979
(Division II)

AUTOMOBILES — REVOCATION OF DRIVER'S LICENSE FOR DWI — DUTY IMPOSED UPON COURTS. — The revocation of a driver's license for driving while under the influence of intoxicating liquor or drugs under Ark. Stat. Ann. § 75-1029.4 (Supp. 1977) is a duty imposed upon the courts and may not be done by the Chief of the Driver Control Section of the Department of Finance and Administration.

Appeal from Arkansas Chancery Court, *Lawrence E. Dawson*, Chancellor; affirmed.

Jack East III, Joseph Svoboda, Barry Coptin, H. Thomas Clark, Jr., by: *Timothy J. Leathers*, for appellant.

Macom, Moorhead & Green, for appellee.

CONLEY BYRD, Justice. Following appellee, Bernard J. Berg, Jr.'s forfeiture of a cash appearance bond in connection with a driving while intoxicated charge, appellant's predecessor, Chief of the Driver Control Section, Arkansas Department of Finance and Administration, Revenue Division, notified appellee that his driver's license was being revoked for a period of three months pursuant to Ark. Stat. Ann. § 75-1029.4 (Supp. 1977), which provides:

“In addition to the fines and penalties as now provided by law under the provisions of Section 3 [§ 75-1029] of Act 208 of 1953, as amended, for persons convicted of driving or [being] in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drugs, additional sanctions shall be applied as hereinafter provided.

1. (a) When a person has been convicted for driving, or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drugs, and such person has not been convicted of such offense for a period of three (3) years prior to the date of arrest on the charge which led to said conviction, such conviction shall constitute a first offense and the driving privilege of such person shall be suspended for not less than ninety (90) days. The court in which the conviction for first offense of operating or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drugs occurs may recommend that a restricted license be issued for the purpose of maintaining a livelihood or other dire needs of the licensee as may be determined by a Driver's License Hearing Officer. The determination that restricted driving privileges are to be granted shall occur at an administrative hearing to be conducted by a Driver's License Hearing Officer under provisions of existing statutory requirements for such hearings. The Hearing Officer conducting such hearing shall consider the total driving record of the person convicted for first offense of driving under the influence of intoxicating liquor or drugs for the purpose of deciding if a restricted permit should be issued, and to determine the restrictions to be placed on such person's driving privilege in the State of Arkansas."

On petition of appellee, the trial court enjoined the action of appellant on the basis that the statute, *supra*, did not authorize appellant to revoke appellee's license— *i.e.* the revocation of the license was a duty imposed upon the courts of this State. We agree with the trial court.

Affirmed.

We agree. HARRIS, C.J., HOLT and PURTLE, JJ.