OHIO'S POINT SYSTEM AND TRAFFIC COURTS

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Comprehensive legislation on the subject of "Point Systems" affecting operator's and chauffeur's licenses was enacted by the last session of Ohio's General Assembly.[1] Ohio is the third state to take the legislative route in setting up a system of points to be assessed against individual motor vehicle operators for convictions of violations of traffic laws. The states which preceded Ohio were Nebraska in 1953[2] and South Carolina in 1955.[3]

Point systems had previously been established by administrative rule or regulation in other states, the first one being established in 1947 by the Commissioner of Motor Vehicles for the state of Connecticut.[4] The satisfactory experience reported by this state led to a similar program being undertaken on July 1, 1952 by the Director of Motor Vehicles of New Jersey; by the South Carolina State Highway Department on January 1, 1953;[5] and by the Director of Vehicles and Traffic for the District of Columbia on April 1, 1953.[6] At the present time twelve other states are using a point system as an administrative guide to driver's license suspensions and revocations.[7] Several other states, without public announcement, follow the format of a point system in ascertaining when to take action against drivers accumulating a number of convictions, bail forfeitures and accidents.[8]

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[1] Amended House Bill No. 148 was passed on June 18, 1957 and approved by the Governor on June 22, 1957. It carried an emergency clause making it effective immediately as of June 22, 1957. However, the Common Pleas Court of Hamilton County ruled this act was not effective until September.

[2] NEB. REV. STAT. §§39-794 through 37-796, 39-7,128 through 39-7,133 (Supp. 1955).

[3] S. C. CODE §§46-193 through 46-193.15 (Supp. 1956).

[4] An effort to establish a legislative point system for Connecticut was vetoed on June 21, 1957. Public Acts of Connecticut, January session 1957, Act No. 600, page 943. It was reported that the governor's veto was based on the inclusion of a provision permitting an application for a hearing within five days of the suspension under the point system and after such hearing to restore such license or continue the suspension.

[5] The administrative regulations were subsequently declared invalid. South Carolina State Highway Department v. Harbin, 226 S.C. 585, 86 S.E. 2d 466 (1955).

[6] ELKOW and STACK, THE POINT SYSTEM, Center for Safety Education, New York University, 1954, pages 8 and 9.

[7] These states are Indiana, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, New York, Pennsylvania, Rhode Island, Washington and Wisconsin. California's negligent operator program is considered to qualify as a point system.

[8] Alabama, Arizona, Iowa, Michigan and Oklahoma use such a plan even though not generally publicized as much as the other states listed in footnote 7, *supra.*

The Ohio Point System Law provides for recording points for each conviction or bond forfeiture on the following formula:

(A) Manslaughter resulting from the operation of a motor vehicle ---------- 6 points
(B) Operating a motor vehicle while under the influence of intoxicating liquor or narcotic drug ---------- 6 points
(C) Failing to stop and disclose identity at the scene of the accident when required by law ---------- 6 points
(D) Driving while operator's or chauffeur's license is under suspension or revocation ---------- 6 points
(E) Reckless operation in violation of section 4511.20 of the Revised Code or ordinance in conformity thereto, if based upon any factor other than speed ---------- 3 points
(F) Violation of any law or ordinance pertaining to speed ---------- 2 points
(G) All other moving violations pertaining to the operation of motor vehicles reported under this section ---------- 2 points

An abstract of court records must be forwarded to the Registrar of Motor Vehicles within 10 days of the conviction or bond forfeiture of a person charged with violating the Rules of the Road provisions set out in sections 4511.01 to 4511.78 and 4511.99, Revised Code; the equipment and load provisions contained in sections 4513.01—4513.36, Revised Code, or any other law or ordinance regulating the operation of vehicles, streetcars, and trackless trolleys on highways.

It is further provided that:

> Whenever the points charged against any person exceeds five, the registrar shall forward to such person at his last known address, a warning letter listing the reported violations, along with the number of points charged for each, and outlining the suspension provision of this section.
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> When, upon determination of the registrar, any person has charged against him a total of not less than twelve points within a period of two years from the date of the first conviction within said two year period, the registrar shall, within thirty days from the date of the last such conviction, file an application with the clerk of the court of common pleas in the county where such person resides or, if the offender is a child as defined in section 2151.01 of the Revised Code, in the juvenile court in the county wherein such person resides, requesting suspension of such person's license or permit to operate a motor vehicle for a period of one year.

Section 4507.40, Revised Code, further declares that the existence of a record which shows twelve or more points charged against a person shall be prima facie evidence that such person is an habitual traffic law violator under the provisions of this section.

This section further provides that the hearing in the Court of

Common Pleas shall be on the issue: "Is the person whose license is sought to be suspended an habitual traffic law violator?" The court shall decide such issue upon the record certified by the registrar and such additional relevant, competent and material evidence as either the registrar or the person whose license is sought to be suspended submits.

If the court finds from the evidence submitted that the person whose license is sought to be suspended is an habitual traffic law violator under the provisions of this section then the court may:

(1) Impose the suspension requested by the registrar;
(2) Withhold the suspension as requested by the registrar, or a part thereof, and provide such conditions or probation as the court deems proper.

The enactment of Section 4507.40, Revised Code, raises several questions of interest to traffic court judges and others. In the first instance, the General Assembly added the point system to the existing methods for suspending or revoking the license of an operator or chauffeur. It retained Section 4507.16, Revised Code, which permits the trial judge of any court of record to suspend, for any period of time not exceeding three years or to revoke, the license of any person who is convicted of or pleads guilty to:

(A) Manslaughter resulting from the operation of a motor vehicle;
(B) Operating a motor vehicle while under the influence of intoxicating liquor or narcotic drug;
(C) Perjury or the making of a false affidavit under sections 4507.01 to 4507.39, inclusive, of the Revised Code, or any other law of this state requiring the registration of motor vehicles or regulating their operation on the highway.
(D) Any crime punishable as a felony under the motor vehicle laws of this state or any other felony in the commission of which a motor vehicle is used;
(E) Failing to stop and disclose identity at the scene of the accident when required by law to do so.

The General Assembly also continued the authority of any trial judge of a court of record, to suspend the license of any person coming within the provisions of Section 4507.34, Revised Code, which reads:

> Whenever a person is found guilty under the laws of this state or any ordinance of any political subdivision thereof, of operating a motor vehicle in violation of such laws or ordinances, relating to reckless operation, the trial court of any court of record may, in addition to or independent of all other penalties provided by law, suspend for any period of time or revoke the license to drive of any person so convicted or pleading guilty to such offenses for such period as it determines, not to exceed one year.

The requirement upon judges of courts of record to note con-

victions or pleas of guilty for any violation of the traffic laws upon the operator's or chauffeur's license has been eliminated.[9] However, the duty to report such conviction and pleas of guilty has been incorporated in Section 4507.40, Revised Code, the section under discussion. This continuing duty to report convictions is the heart of the operation of the point system.

It is fair to assume that as the public becomes acquainted with the Ohio Point System that more and more persons will be demanding trials in the traffic courts. Each encounter with a charge for violating traffic laws will assume greater importance to the violator. His habit of forfeiting bail without appearance in court will undoubtedly change if the Registrar of Motor Vehicles takes full advantage of the Point System. With court appearances increasing, so will the prospect of retaining legal counsel increase, not only to defend against the pending charge but also against any action that may be initiated under the point system law.[10]

The first question that arises in reviewing the point system provisions relates to the validity of this type of legislation. The Ohio Court of Appeals in Franklin County had occasion to consider the constitutionality of the Financial Responsibility Law. In *Ragland v. Wallace*,[11] the court stated:

> This class of legislation falls within the police power of the state under which the Legislature is given an exceedingly broad power. It lies within the power of the Legislature to enact legislation controlling the operation of a motor vehicle on the public highways, prescribing who may operate such motor vehicles, and under what conditions such right is denied. The Legislature is not restricted in the exercise of this power unless the enactment violates some specific constitutional provision or provisions of the enactment are found to be an unreasonable exercise of the power.
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> Plaintiff-appellant was given a remedy under the Act, and he pursued it. He had his day in court. We are of the opinion that Section 6928-1, G.C., and other related sections of the Act, particularly Section 6928-18 G.C. which provides for a review of the order of the Registrar in the Common Pleas Court are in pari materia and must be construed together. Furthermore, we are of the opinion that the provisions of these sections meet the test of due process and not in violation of the "due process" clause, Amendment XIV Section 1 in the United States Constitution, or the "due course of law" clause, Article 1, Section 16 in the State Constitution.

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[9] The first paragraph of OHIO REV. CODE §4507.15 was repealed by Section 2 of Amended House Bill No. 148.

[10] Youngstown Vindicator, July 22, 1957.

[11] 80 Ohio App. 210, 70 N.E. 2d 118 (1946).

On the basis of this view, it would appear that the Ohio courts would be inclined to uphold the point system.

The Supreme Court of Nebraska has had two occasions to consider appeals arising under its legislative point system. In the first case, *Durfee v. Ress*,[12] decided February 15, 1957, the validity of the order revoking the driver's license under the point system was not challenged. However, it was contended that the refusal of the Director of the Motor Vehicle Division to suspend the revocation upon providing "three years proof of financial responsibility" was invalid.

The court stated that:

> revocation of the driver's license here involved is in no sense a penalty for the violation of statutes or ordinances involved. The penalties provided therefor have been satisfied.
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> The net of this situation is that the plaintiff by his violations of the law has created a record upon which the state in the exercise of its police power has determined that his driver's license shall be revoked. The state has also determined the conditions under which that revocation may be suspended. . . . We conclude that the revocation of a license to operate a motor vehicle in this state under the point system provided by the statute is not an added punishment for the offense or offenses committed as a result of which the points are accumulated. The purpose of the revocation is to protect the public, and not to punish the licensee. Where an operator's license is revoked under the point system and the statute providing the conditions under which the revocation may be suspended has been amended during the period of the accumulation of the points as a result of which the revocation occurs, the amended act controls. Such an application is not an ex post facto application within the prohibitions of the United States and the state Constitutions.

The second Nebraska case of *Stewart v. Ress*[13] was decided on June 28, 1957. Again, the constitutionality of the point system was not challenged. The order of the Director of Motor Vehicles was attacked as being void on the ground that the files and records did not contain sufficient proof of the required number of twelve points because: (a) one conviction report named a person with a different middle initial;[14] (b) another conviction report listed the driver's license as J2-1901-L while the correct driver's license number was J2-190-16; and (c) the other conviction reports did not specify whether a municipal ordinance or a statutory prohibition was violated. The court, after disposing of these

[12] 163 Neb. 786, 81 N.W. 2d 148 (1957).

[13] 164 Neb. 876, 83 N.W. 2d 901 (1957).

[14] The person named in one conviction report used in assessing points was shown as Donald H. Stewart. The person whose license was revoked was named Donald A. Stewart.

contentions on the ground that they had been inferentially conceded by the pleadings, stated:

> The plea of guilty to each of the charges made by appellee was the equivalent of a conviction by trial and verdict or a finding of guilty by the court.
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> Accused, by making a plea of guilty, waives all defenses, except that the complaint or information is not sufficient to charge an offense. Such a plea makes a jury trial unnecessary. A plea of guilty accepted by the court is a conviction or the equivalent of a conviction of the highest order. . . . Each conviction of appellee for speeding in violation of a city ordinance or a statute of the state amounted, under the point system for dealing with traffic violations, to 3 points and a total of 12 points for the four convictions. Section 39-7,128,R.S. Supp., 1955. Evidence of the convictions of appellee as recited above was certified to the Director of Motor Vehicles and when it came to his attention that appellee had accumulated a total of 12 points within a 2-year period it was the duty of appellant to revoke the license of appellee to operate a motor vehicle in the state for a period of 1 year from September 11, 1956, the date of the last conviction. Section 39-7,129,R.S. Supp., 1955; Durfee v. Ress, 163 Neb. 768, 81 N.W. 2nd 148. This was a duty, ministerial in character, required to be performed by appellant. Section 39-796, R.S. Supp., 1955.

It is interesting to note that there is a direct right of appeal in Nebraska from the administrative order of the Director of Motor Vehicles.[15] The same is true of the South Carolina Point System where a direct appeal is allowed to the Circuit Court to review the record of the administrative determination certified to by the Director of the Motor Vehicle Division.[16]

On the other hand, under the Ohio law, the hearing before the Court of Common Pleas cannot be considered an appeal. The General Assembly has imposed a non-judicial duty upon the Court of Common Pleas. It has provided a procedure whereby the hearing on whether or not the person with a record of 12 points is an "habitual traffic law violator" is to be decided by a judge accustomed to conducting hearings on a wide variety of cases.

A somewhat analogous situation has arisen in the state of Wisconsin. In the case of *State v. Marcus* decided on December 4, 1951,[17] the question arose whether the power conferred upon a judge of a court of record to order the issuance of an occupational driver's license upon application of a person whose license had been revoked was administra-

[15] NEB. REV. STAT. §39-7,130 (Supp. 1955).
[16] S. C. CODE §46-193.12 (Supp. 1956).
[17] 259 Wis. 543, 49 N.W. 2d 447 (1951).

tive or judicial in character.[18] The Wisconsin court, citing *Cincinnati v. Wright*[19] with approval, stated:

> It was there held that the granting, suspension or revocation of licenses to operate motor vehicles are legislative and executive functions, and that the power to grant, suspend and revoke such licenses can be conferred on administrative officers, as well as on courts, and therefore a motorist who was charged with violating a municipal ordinance which authorized the court to suspend his driver's license on conviction was not entitled to a jury trial. The Ohio Court of Appeals in its opinion quoted the following statement appearing in 5 Am. Jur. 593, sec. 157: "It is competent for the Legislature to prescribe the conditions under which the privilege of operating an automobile on the public highways may be exercised." and followed the same with this statement of its own, 67 N.E. 2d 358 at page 360: "This regulatory power, like all other phases of the police power, is legislative and administrative, and when properly exercised presents no occasion for the exercise of the judicial power." . . . In the case of Ex parte Ballew, 20 Okl. Cr. 105, 201 P. 525, 527, an Oklahoma statute, 37 O.S. 1941 §83, made it the duty of the "*judge of any court of record*," upon the written request of the county attorney, or upon the sworn complaint of any other person, to issue a subpoena for any witnesses that might have knowledge of the violation of the state prohibition law and to compel such witness to appear before him and testify as to such knowledge and produce any books or papers which would aid in the prosecution of such inquiry. The statute gave the judges the right to punish for contempt any person who failed to appear in response to the subpoena or, appearing, refused to answer any proper question. Such a proceeding was called a "court of inquiry". . . . The Oklahoma Criminal Court of Appeals stated in its opinion in Ex parte Ballew . . . with reference to the duties of a district judge while conducting a court of inquiry, 201 P. 528:
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> The duties devolving upon the judge in these special proceedings are for the most part ministerial, and not judicial. The Legislature might have delegated this power to the mayor of the city, to some notary public, or to some other officer. The fact that this power was delegated to a judge does not necessarily make him a court of record. Burfenning v. Chicago St. P.M. & O.R. Co., 163 U.S. 321, 16 S.Ct. 1018, 41 L.Ed. 175; State (Ex rel. Miller) v. Huser, 76 Okl. 130, 184 P. 113. . . .

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[18] WIS. STAT. §85.08(a) and (b) (1957).

[19] 77 Ohio App. 261, 67 N.E. 2d 358 (1945).

> We are of the opinion that sec. 85.08(25c)(a), Stats. conferred no judicial power upon the county court of Chippewa County and that the county judge in entering the order directing the issuance of an occupational license to the applicant Gerhard was acting solely in an administrative capacity.

It would appear that the nature of the hearing before the Court of Common Pleas would necessarily be administrative in character. The record certified by the registrar and additional, competent and material evidence submitted must assist the court in aiming at the answer to the question: "Is the person whose license is sought to be suspended an habitual traffic law violator?" The answer assists the registrar in carrying out his administrative duties. It would seem, therefore, that the right to appeal from this rule would be based on the judicial review set out in the Administrative Procedure Act.[20]

Some of the problems that may confront the Courts of Common Pleas have already arisen under the administration of the point system established for the District of Columbia. In the first case of *Chappelle v. Board of Commissioners of the District of Columbia*,[21] decided January 17, 1955, it was contended that there was lack of proof of basic facts because police arrest records had been forwarded to the director. Without questioning their admissibility, he took issue with the conclusiveness attached to them. The court ruled that where an election had been made to forfeit collateral, not seeing fit to contest the charge, there was no right to contest them before the director. On the other charge which was contested in court it was ruled that proof of arrest on a charge does not constitute proof of guilt of the charge. This situation should not occur under the Ohio legislation which permits action only upon abstracts of court records which shall include, among other things, the nature of the offense, the plea, the judgment, or whether bail forfeited, and the amount of fine or forfeiture.

The most recent case under the District of Columbia point system is *Ritch v. Director of Vehicles and Traffic* decided July 6, 1956.[22] Here, the contentions were that the hearing granted did not satisfy the requirements of due process because: (1) he was not advised of his right to counsel; (2) he was denied the right to confront and cross-examine witnesses; and (3) the hearing officer failed to make findings of fact and conclusions of law.

The court stated that:

> Due process, in reference to administrative proceedings, demands that the case be "fairly heard." The requirements of

[20] OHIO REV. CODE §119.11 (1953).

[21] 110 Atl. 2d 697 (1955). In another case, Lambert v. Board of Commissioners of the District of Columbia, 116 Atl. 2d 926 (1955), the court again ruled that election to forego the opportunity to contest the charge bars him from raising an objection to the number of points assessed against him.

[22] 124 Atl. 2d 301 (1956).

a fair hearing are dependent upon the nature and purpose of the hearing itself. The procedure followed need not conform strictly to the formalities of a court action and many administrative proceedings are purposely conducted in an informal manner. Informality, unless lacking in "the rudimentary requirements of fair play," or violative of statutory regulation, does not violate due process.

This concept of informality permeates administrative action under the point system. The primary purpose of revocation is not punishment of the individual but protection of the community. It is the result of a determination that the operator is endangering the lives and property of his fellow citizens. A motorist is given ample opportunity to correct his bad driving habits. He is given a warning by mail when he has been assessed three points. When he has accumulated five points, he is requested to appear at the Department of Vehicles and Traffic for a conference. At the conference a review is had of the motorist's driving record and an attempt is made to make him more conscious of his obligations and to solicit his cooperation in observing traffic rules and regulations. The motorist is warned that should his point total reach eight, his permission to operate a motor vehicle in the District may be suspended, and that should he accumulate twelve or more points, his permit is subject to revocation. The hearing granted after receipt of notice of proposed suspension or revocation is no less informal than the "five point conference." Prior to his appearance at the hearing, the motorist is advised that the hearing officer will expect him to furnish reasons why, in view of his traffic record, his operator's permit should not be suspended or revoked. The hearing officer is not obliged to sustain the suspension or revocation, but if the hearing develops no mitigating circumstances such action is usually taken and the motorist is ordered to turn in his permit within three days.

It is apparent that a hearing of this type does not require the testimony of adverse witnesses. The motorist is presented with his own traffic record reflecting the specific violations of which he has been found guilty or on which he has forfeited collateral. The purpose of the hearing is not to retry these violations; it is merely to afford the motorist an opportunity to show why, notwithstanding the violations, he should be permitted to retain his permit. In the instant case petitioner in his application for a hearing and for review clearly and cogently stated why he thought his permit should not be revoked, namely, that his occupation was that of a truck driver and without his permit he would be deprived of his means of liveli-

> hood, and he orally stated the same reasons at the hearing. We cannot rule that he was prejudiced by the failure to be advised that he was entitled to assistance of counsel.

The court also ruled that in proceedings of this character the accusatory witness was the petitioner's own traffic record and that under the point system he is bound by his court record of convictions and forfeitures. The court also ruled against the third contention, stating that:

> It is apparent that the only findings of fact necessary were that sufficient points had accumulated to warrant revocation of the permit, that the evidence offered in mitigation was not deemed sufficient to justify an exception, and that petitioner was not a fit person to operate a motor vehicle in the District of Columbia. All these findings are implicit in the order of revocation. No conclusions of law were necessary.

From these cases it can be deduced that the nature of the hearing in the Court of Common Pleas will require the registrar to introduce the certified records, showing an accumulation of twelve points, then the burden of proceeding with the evidence will shift to the respondent who will attempt to overcome the prima facie case. Then the court must consider the sufficiency of the mitigating evidence, if any, produced at the hearing. If sufficient, it will then be necessary for the registrar to produce further evidence to sustain the burden of proof.

The question whether an "habitual traffic law violator" is adequately spelled out in section 4507.40, Revised Code will undoubtedly be raised. The New York Courts were confronted with a similar situation in the matter of *Ross v. MacDuff* decided July 8, 1955.[23] Under the New York Point System a person who has six points in two years or eight points in any period of time is considered to evidence persistent or habitual violation. Two points are assessed for a speeding violation and one point for passing a red light. The motorist in question admitted to six prior convictions but offered mitigating circumstances in the hearing before the Hearing Commissioner. His license was suspended for 15 days pursuant to statutory authority permitting such suspension "for habitual or persistent violation" of the traffic laws and ordinances.

The contention was then made that this authority was unconstitutional because it delegated legislative functions to an administrative body without providing any criteria or standards defining the words "habitual" or "persistent." The court overruled this contention as such a requirement should be left to the reasonable discretion of the administrative official. The court also stated:

> The circumstances under which a licensee may be deemed guilty of habitual and persistent violation vary with the changes in highway condition, amount of traffic, type of control, power,

[23] 309 N.Y. 56, 127 N.E. 2d 806 (1955).

speed of vehicles, changes in local traffic regulations and ordinances, and a myriad of other elements which necessitate the delegation of the formulation of specific rules to administrative officials. (Cf. Matter of Mandel vs Board of Regents, 250 N.Y. 173). It held the suspension justified.

In New York the magistrate or judge has the concurrent power with the Commissioner of Motor Vehicles to suspend or revoke in an individual case. This will, of course, not interfere with the operation of the point system. The report of conviction must still be forwarded to the state driver licensing authority. Action thereafter taken on the record is not a part of the punishment.[24] Nevertheless the New York Courts, under their point system, have gone a long way to protect their motorists from the therapeutic value originally intended. One of the defenses raised against the proper assessment of points is that there was a failure on the part of trial judge or the traffic court to warn against the possible action which may be taken against their driver's license.[25] This has been followed with statements that "A license to operate an automobile is of tremendous value to the individual and may not be taken away except by due process."[26]

Another matter which has arisen is the applicability of the point system to persons who are non-residents or who do not possess a valid operator's or chauffeur's license. Inferentially, it may be stated that Section 4507.39, Revised Code, is broad enough to include them. However, it would be desirable to clarify this point.

Some question may be raised as to the necessity for forwarding reports of convictions through abstracts of court records on the ground that it is not the exercise of a judicial power. It has been held that this requirement created by legislation is only the performance of a ministerial duty.[27]

In the final analysis, it would seem that the General Assembly was attempting to meet the objections which were raised against the administratively established point system in South Carolina.[28] It may have

[24] City of Cincinnati v. Wright, 77 Ohio App. 261, 67 N.E. 2d 358 (1945); Commonwealth v. Burnett, 274 Ky. 231, 118 S.W. 2d 558 (1938); Commonwealth v. Harris, 278 Ky. 218, 128 S.W. 2d 579 (1939); Prichard v. Battle, 178 Va. 455, 17 S.E. 2d 393 (1942).

[25] NEW YORK CODE CR. PROC. §335(a) provides for such a warning by the traffic court judge. In the matter of Hubbell v. MacDuff, 2 N.Y. 2d 563, 161 N.E. 2d 857 (1957). In the matter of Astman v. Kelly, 2 N.Y. 2d 567, 161 N.E. 2d 860 (1957), decided the same day. See also Tepper v. Kelly, 165 N.Y.S. 2d 802 (1957), which held that a warning printed on the Uniform Traffic Ticket is sufficient.

[26] In the matter of Moore v. MacDuff, 309 N.Y. 35, 127 N.E. 2d 741 (1955). Also in the matter of Goff v. MacDuff, 207 N.Y. Misc. 624, 139 N.Y.S. 2d 632 (1955).

[27] People v. Reiner, 6 Ill. 2d 337, 129 N.E. 2d 159 (1955).

[28] South Carolina Highway Dept. v. Harbin, 226 S.C. 585, 86 S.E. 2d 466 (1955).

anticipated the dissenting opinion filed by Judge Porter Sims on July 8, 1957 in the Kentucky case of *Sturgill v. Beard*.[29] Judge Sims stated that:

> In the case before us, the Director instead of carrying out the legislative will is in effect and in form legislating on his own accord in inaugurating his "point system," a thing the Legislature never had in mind when it enacted the various sections in KRS Chapter 186. Nor is a "point system," or anything akin to it, mentioned or even suggested in any sections of Chapter 186. As was written in In re Chapman, 166 U.S. 661, 17 S.Ct. 677, 41 L.Ed. 1154, the Legislature cannot delegate the exercise of its discretion as to what the law shall be, but it may delegate to a person or a department the administration of the law itself.
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> I have no quarrel with the "point system" and realize it is most important to strictly regulate motor traffic and to rid the highways of habitually reckless drivers or those who continuously and repeatedly violate traffic laws. But I say such authority is vested only in the Legislature and in enacting laws to this end, §2 of our Constitution forbids it from placing arbitrary and absolute power in one department or in one man. It is to be hoped that the next General Assembly will enact its own "point system." Our form of government does not permit the Department of Public Safety or its Director to substitute its or his appraisal of the punishment to be inflicted for a violation of law. Such punishment can only be inflicted by the General Assembly. No matter how lofty and noble are the plans of the Director, they must be founded upon a constitutional basis, rather than upon his own whims or even his benign judgment or wise discretion.

The legislatively enacted point system will need careful administration on the part of the Registrar of Motor Vehicles. The Courts of Common Pleas should meet with the Registrar to outline a modus operandi that will insure fair play for the violator and at the same time insure protection of the public from "habitual traffic law violators."

[29] 303 S.W. 2d 908 (Ky. 1957). The opinion in this case was filed June 21, 1957 the day before the Governor signed Amended House Bill No. 148.