

**Summary of SC90403, *Michael Strup v. Director of Revenue***

Appeal from the Johnson County circuit court, Judge Joseph P. Dandurand  
Argued and submitted Feb. 23, 2010; opinion issued April 20, 2010

**Attorneys:** The director was represented by Solicitor General James R. Layton of the attorney general's office in Jefferson City, (573) 751-3321, and Strup was represented by Lauri J. Laughland of the Law Office of Lauri J. Laughland in Grandview, (816) 765-5666.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** The director of revenue appeals a circuit court judgment reinstating a man's commercial driving privilege. In a unanimous decision written by Judge Zel M. Fischer, the Supreme Court of Missouri reverses the circuit court's judgment. The post-disqualification hearing the man was given satisfies due process, and the director did not err in disqualifying the man's commercial driving privileges because he was arrested on probable cause to believe he was driving while intoxicated with a blood-alcohol concentration of 0.08 percent or more, which constitutes a "conviction" for the purposes of disqualification under the commercial driver's license act.

**Facts:** In July 2006, Michael Strup was arrested for driving while intoxicated. Although the criminal charges eventually were dropped, the director of revenue suspended Strup's base driving privilege and disqualified his commercial driving privilege as a result of the suspension of his base driving privilege. Strup sought circuit court review of both the suspension of his base driving privilege and the disqualification of his commercial driving privilege. Following a consolidated hearing on both issues in November 2007, the circuit court entered judgment determining Strup's base driving privilege properly was suspended because he was arrested on probable cause to believe he was driving while legally intoxicated but determining the director violated Strup's due process rights in disqualifying his commercial driving privileges without a hearing and contrary to chapter 302, RSMo. Strup did not appeal the judgment affirming the suspension of his base driving privilege, but the director appeals the judgment reversing the disqualification of Strup's commercial driving privilege.

**REVERSED.**

**Court en banc holds:** (1) Strup's due process rights were not violated. Due process – which requires notice and the opportunity to be heard – applies to the state's suspension and revocation of driver's licenses. The United States Supreme Court has held, however, that due process does not always require an opportunity to be heard before a state suspends or revokes a person's driver's license based on objective statutory criteria involving public safety, so long as the person is afforded a later opportunity to challenge the suspension or revocation in a full hearing. *Dixon v. Love*, 431 U.S. 105, 115 (1977). Here, although the director disqualified Strup's commercial driving privilege in late September 2007, he was afforded a full post-disqualification hearing in the circuit court in early November 2007.

(2) The circuit court erred in reversing the disqualification of Strup's commercial driving privilege because the suspension of Strup's base driver's license constitutes a "conviction" for driving under the influence of alcohol for the purposes of the commercial driver's license act. After a hearing, a hearing officer sustained the director's suspension of Strup's base driving privilege, finding that Strup was arrested on probable cause that he was driving with a blood alcohol concentration of 0.08 percent or more. He then requested a trial anew in the circuit court, which upheld the director's decision to suspend Strup's base driving privilege. Because Strup did not appeal the circuit court's decision, the suspension is final. Under section 302.755.1, RSMo Supp. 2005, a person is disqualified from driving a commercial vehicle for a period of not less than one year if "convicted" of a first violation. Section 302.700.2(8), RSMo Supp. 2005, defines "conviction" to include "a determination that a person has violated ... the law in ... an authorized administrative proceeding." Under section 302.755.1(1), a violation that establishes a conviction and merits disqualification of a commercial driving privilege is driving under the influence of alcohol, which section 302.700.2(13)(e) defines as "[h]aving any state, county or municipal alcohol-related enforcement contact," which section 302.535.3, RSMo Supp. 2002, defines to include "any suspension or revocation" under specified sections of chapter 302. As such, the suspension of Strup's base driver's license constitutes a "conviction" meriting disqualification of his commercial driving privilege of not less than one year.