

## Research Department

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## Minnesota House of Representatives

April 9, 2014

TO: Interested Parties

FROM: Jeff Diebel, Legislative Analyst *J.P.D.*

RE: Legislative Immunity from Arrest

This memo is in response to interest expressed by several members.

The Minnesota Constitution extends the following privilege from arrest to members of the legislature:

**Sec. 10. Privilege from arrest.**

The members of each house in all cases except treason, felony and breach of the peace, shall be privileged from arrest during the session of their respective houses and in going to or returning from the same. . . .<sup>1</sup>

Minnesota appellate courts have not interpreted this provision.<sup>2</sup> However, the U.S. Supreme Court has interpreted a substantively identical provision contained in the U. S. Constitution. This memorandum discusses the U.S. Supreme Court's decision in *Williamson v. U.S.*<sup>3</sup>, state court cases that have followed the *Williamson* decision, and related opinions from state attorney generals.

***Williamson v. U.S.***

In 1908, the U.S. Supreme Court was called upon to rule on the appropriateness of a sitting congressman's assertion of the legislative privilege against arrest.<sup>4</sup> Congressman Williamson had been arrested and convicted of a misdemeanor-level crime (*i.e.*, subornation of perjury). In

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<sup>1</sup> Minnesota Constitution, article IV, section 10.

<sup>2</sup> The attached news articles discuss the DWI cases of two legislators who invoked their legislative privilege from arrest. In one case, the State Patrol arrested a senator for DWI despite the senator asserting his immunity from arrest. In the second case, a House member successfully delayed being charged with DWI until after the legislative session after invoking the legislative privilege from arrest. According to the news report, the trial court that heard the latter case concluded that the House member was not entitled to immunity from arrest for public offenses. Trial court opinions are not binding precedent on other courts in the state.

<sup>3</sup> *Williamson v. U.S.*, 207 U.S. 425 (1908)

<sup>4</sup> *Id.*



his appeal, Williamson invoked his immunity from arrest. The federal legislative immunity clause reads, in relevant part, as follows:

They [Members of Congress] shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same. . . .<sup>5</sup>

Since the underlying crime of subornation of perjury did not constitute treason, a felony, or a breach of peace, the court sought to define the scope of “treason, felony, and breach of peace” for purposes of the legislative privilege from arrest.

The *Williamson* court began with a historical exploration of the origins of the this provision. The court traced the clause’s origins to parliamentary privilege as practiced in England prior to the founding of the United States. The court consulted a variety of English legal authorities and concluded that the clause “treason, felony, and breach of peace” covered all criminal offenses in Great Britain. The court reasoned that since the founding fathers adopted the parliamentary privilege from England, they also adopted the English definition of “treason, felony, and breach of peace.” The result is that a member of Congress may not invoke the legislative privilege from arrest in criminal matters.<sup>6</sup>

Since the *Williamson* court concluded a member of the legislature cannot invoke the privilege from arrest in criminal cases, the court was forced to search further for the purpose of the privilege. The court concluded that the privilege was intended to protect legislators from arrest in civil matters. Civil arrest was common in England prior to the American revolution and was a real threat to members of the British Parliament. Likewise, the Supreme Court noted in 1934 that “when the Constitution was adopted, arrests in civil suits were still common in America.”<sup>7</sup> An example of civil arrest is when a court issues an arrest warrant for a person who fails to appear before the court in response to summons. Because civil arrest is no longer a common practice, the federal legislative immunity from arrest is applicable in a very limited number of circumstances.

### State Court Rulings

State courts that have interpreted similar state constitutional provisions on legislative immunity from arrest have concurred with the *Williamson* decision. For example, the Oklahoma Supreme Court relied directly on the holding in *Williamson* in ruling that state legislators are not immune from arrest for traffic violations.<sup>8</sup> Likewise, the Illinois Court of Appeals, relying on *Williamson*, ruled that a state legislator is not immune from arrest for traffic violations during the

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<sup>5</sup> U. S. Constitution, Article 1, section 6, clause 1.

<sup>6</sup> This conclusion essentially extends the term “breach of peace” to cover all criminal conduct that is not a felony or treason. The court noted that if “breach of peace” is so broad that it incorporates all crimes, the terms treason and felony would appear to be “superfluous.” Nonetheless, the court stuck to its historical interpretation of provision. *Williamson v. U.S.*, 207 U.S. 425, 436 (1908).

<sup>7</sup> *Long v. Ansell*, 293 U.S. 76, 83 (1934) (concurring with the court’s interpretation of “treason, felony and breach of peace” as articulated in *Williamson*); *Gravel v. U.S.* 408 U.S. 606 (1972) (affirming the *Williamson* interpretation of the legislative immunity clause).

<sup>8</sup> *Howard v. Webb*, 570 P.2d 42 (Ok.1977).

legislative session.<sup>9</sup> Similarly, the Wisconsin Court of Appeals cited *Williamson* in denying a state senator's effort to invoke legislative immunity from arrest in a criminal case.<sup>10</sup>

### State Attorney General Opinions

State attorney generals that have offered an opinion on the scope of the terms "treason, felony, or breach of peace," as used in legislative immunity clauses, have uniformly followed the holding in *Williamson* and concluded that the terms encompass all criminal offenses including traffic offenses.<sup>11</sup> The Attorney General of Minnesota has not offered an opinion on this issue.

JD/jf

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<sup>9</sup> *State v. Flynn*, 362 N.E.2d 3 (ILL.App.1977).

<sup>10</sup> *State v. Burke*, 653 N.W.2d 922 (WI.App.2002); *See also, Swope v. Commonwealth*, 385 S.W.2d 57 (Ky.1964) (no privilege from arrest for crimes); *Ex parte Emmett*, 7 P.2d 1096 (Cal.App.1932) (same).

<sup>11</sup> Missouri Attorney General Opinion No. 169-77 (1977) (addressing drunk driving); Washington Attorney General Opinion 1979 No. 1 (addressing traffic offenses); Alabama Attorney General Opinion, No. 2004-095 (2004) (addressing traffic offenses); Arkansas Attorney General Opinion, No. 2003-106 (2003) (addressing all crimes); Georgia Attorney General Opinion, U85-50 (1985)(addressing speeding violations); New Mexico Attorney General Opinion, No. 93-04 (1993) (addressing all crimes, including traffic offenses); South Carolina Attorney General Opinion, No.93-7 (1993) (addressing speeding); Delaware Attorney General Opinion, No. 77-3 (1977) (addressing all crimes); Kentucky Attorney General Opinion, NO. 78-514 (1978) (congressman not immune from arrest for traffic violations while driving in Kentucky); Tennessee Attorney General Opinion, No. 80-363 (1980) (addressing traffic violations); South Dakota Attorney General Opinion, No. 75-60 (1975) (addressing traffic offenses); Pennsylvania Attorney General Opinion (1940) (addressing traffic violations); Mississippi Attorney General Opinion, No. 97-0422 (1997) (addressing driving while impaired); Iowa Attorney General Opinion, No. 67-11-31 (1967) (addressing a similar privilege extended to National Guardsmen).

Rep. Sam Solon

1983

Minneapolis Star and Tribune  
4A Tues., May 17, 1983

See also ~~House~~ District #7  
Clipping file for 1983

## Solon

Continued from page 1A

Larry Fredrickson, a Senate counsel, said he recalled hearing about it a couple of times in the 10 years he's been with the counsel's office.

The report quotes Solon as saying, "I know the damn laws we passed them" when informed of sobriety test procedures.

Solon said that he had left the State Capitol about 10 p.m. and was driving home for the weekend. The Senate adjourned at 8:04 p.m. on Friday.

Solon said he had been traveling about 62 m.p.h.

"I think the officer was interested in getting someone like me," Solon said in a telephone interview. "I think the officer mistook my being very tired from working 12 to 15 hours a day that week for being drunk. I told him that I thought under the strain of going to and from the sessions that we are privileged from arrest. I pulled out my state Senate card and just showed him what it said on the card, and he still proceeded with the arrest."

Solon tried unsuccessfully to call the head of the highway patrol after his arrest, the report said. State Patrol Chief Roger Ledding said yesterday afternoon that he had been out of town all weekend and that he had not heard from Solon yesterday.

State Patrol Sgt. Eric Gunderson, who joined Bloom in booking Solon at the Carlton County Law Enforcement Center, drove Solon to his residence in Duluth after he had been released without bail, the report said.

Solon said that he will not deny that there was an open bottle in the back seat of his car.

"I was taking home some things that I had here because the session's almost over—including, unfortunately, a bottle of vodka that had about one inch in it," Solon said from his Capitol office.

Solon's arraignment had been scheduled for this Thursday, but was postponed until June 2 at his request.

"I think it's unfortunate that for anybody who's in the public life like myself—even if found innocent down the road—the publicity is so damaging not only to myself but to my family and friends," Solon said.

Solon was first elected to the Minnesota House in 1970 and to the Senate in 1972.

# Legislator refuses alcohol test, claims immunity from arrest

By Sharon Schmickle  
Northern Minnesota Correspondent

Duluth, Minn.

State Sen. Sam Solon was charged Monday with drunken driving after telling a Minnesota highway patrolman that he was immune from arrest because he is a legislator.

The 51-year-old Duluth DFLer refused to take breath and blood alcohol tests for the same reason, he said.

A highway patrolman arrested Solon Friday night on Interstate Hwy. 35 near Barnum. Solon was also charged with an open-bottle violation.

The Minnesota Constitution protects legislators from arrest while they are in session or traveling to and from sessions except for cases of treason, felony, and breach of the peace. A DWI charge is a misdemeanor.

Solon said yesterday that he had not been drinking, was exhausted from his legislative work and will plead not guilty to the drunken driving charge. As for the open bottle allegation, he said, "I will not deny that charge."

Arrest records filed by State Trooper Richard Bloom said that he clocked Solon's car at 64 miles per hour and watched it weave across the two

northbound lanes of the freeway four times before he stopped it at 11:23 p.m.

When Solon got out of his car, he appeared unsteady and swayed to and fro, the arrest record said. Bloom reported that he had to help Solon remove his driver's license from his wallet.

"He told me that he was drunk and said, 'So what, that he would have this ticket dismissed in court and also that he would call my chief in St. Paul about this,'" the report said. "He also stated that he was immune from arrests."

Representatives of the Minnesota at-



Sen. Sam Solon

torney general's office and the Senate counsel said no records are kept on how frequently the immunity defense has been used by legislators.

Solon continued on page 1A

5-17-83 5/5

## Duluth: Senator's driver's license is limited after arrest for DWI

State Sen. Sam Solon, who was charged with drunk driving after claiming legislative immunity from arrest, was granted a limited license Friday to drive to and from work, a Department of Public Safety official said.

Solon's license was automatically revoked for six months after his May 13 arrest for DWI.

The 51-year-old DFLer refused to take breath and blood-alcohol tests after a State Patrolman arrested him on Interstate Hwy. 35 near Barnum, Minn. Solon said in a telephone interview last week that he was exhausted but not intoxicated and that he refused to take the tests because, as a legislator traveling home from the capitol, he was immune from arrest.

The Minnesota Constitution protects legislators from arrest while they are in session or traveling to and from sessions except for cases of treason, felony and breach of the



Sam Solon

peace. DWI is a misdemeanor.

State law calls for an automatic six-

Around continued on page 4B



## Around Minnesota

Continued from page 3B

month license revocation for drivers who refuse to take sobriety tests after being stopped under probable cause of driving while intoxicated. The revocation can be appealed to the commissioner of public safety or through the courts, said Marlene Swanson, director of the Driver and Motor Vehicle Division. Solon said yesterday in a telephone interview

that he will not appeal the revocation, but declined to say how he will plead on the DWI charge.

Solon was charged May 16 with DWI and an open-bottle violation and is scheduled for a June 2 court appearance. The bottle, he said, was among possessions he had been hauling home because the session was near an end.



## Solon Continued from page 1A

senator's car was traveling 64 m.p.h. and weaved four times across the two northbound lanes.

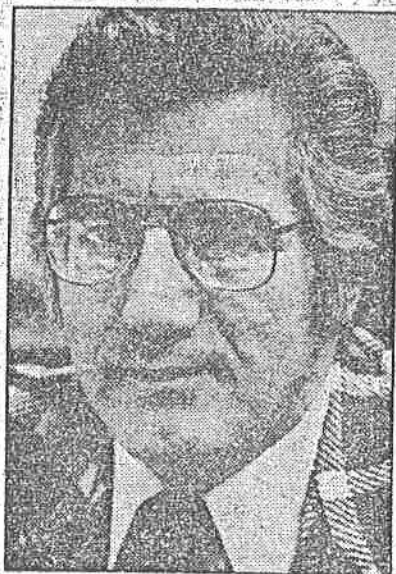
Bloom said Solon was unsteady on his feet, that he had to help Solon remove his driver's license from his wallet, that Solon told him he would have the ticket dismissed and that he stated he was immune from arrest. Solon now says that he doesn't recall what he may have said but that he doesn't dispute the arrest report.

The Minnesota Constitution protects legislators from arrest while they are in session or traveling to and from sessions except for cases of treason, felony and breach of the peace. DWI is a misdemeanor. Solon did try unsuccessfully to call the head of the State Patrol after the arrest.

Solon's guilty plea also contradicts what he told a reporter a few days after the arrest when he said: "I think the officer mistook my being very tired from working 12 to 15 hours a day that week for being drunk."

Solon's press release of yesterday said that "after a long week and a 14-hour day on Friday, May 13, he had been drinking before leaving St. Paul."

"I will continue serving and working



Sen. Sam Solon

for the people of Senate District 7 and I ask my constituents to continue placing their faith in me as their elected representative," Solon said.

Carlton County Judge Dale Wolf has ordered a presentence investigation. Restrictions have already been placed on Solon's license because he refused to take breath or blood-alcohol tests the night of the arrest. Solon, 51, has been in the Legislature since 1970 and in the Senate since 1972.

## Sen. Solon pleads guilty to drunken driving

By Eric Black  
and Sharon Schmickle  
Staff Writers

Sen. Sam Solon, DFL-Duluth, who had maintained that as a legislator he was immune from arrest when he was stopped on Interstate Hwy. 35 on May 13, has pleaded guilty to drunken driving and asked his constituents to forgive him.

Solon had said he was not drunk but exhausted when a State Trooper pulled him over near Barnum, Minn.

In a press release that his Senate office issued Friday, Solon says he never intended to argue that his legislative position made him immune from prosecution, only that his trial should be delayed until after the legislative session was over.

He also pleaded guilty to having an open vodka bottle in his car.

"It was a case of poor judgment on my part and I have learned a good lesson," he said.

Solon commended the arresting officer for enforcing the law and said he expected the court to treat him as it would any citizen.

According to arrest records filed by State Trooper Richard Bloom, the

Solon continued on page 1A

# Solon told to seek alcoholism treatment

Associated Press

Carlton, Minn.

State Sen. Sam Solon has been ordered to seek treatment for alcohol abuse as part of a sentence for driving while intoxicated and having an open bottle of liquor in his car.



Sen. Sam Solon

Carlton County Judge Dale Wolf also fined the Duluth DFLer \$500.

Solon, 51, who pleaded guilty to the charges May 26, said in an interview after his sentencing Friday that a "problem with alcohol" led to his arrest.

Wolf stayed a 60-day jail sentence for a year, provided Solon meets several conditions. Besides participating in a chemical dependency program and attending Alcoholics Anonymous meetings, Solon is to

have no further alcohol-related arrests, maintain contact with a probation officer, and attend a driving improvement clinic.

Solon said in an interview that he is confident that after his treatment "I can continue to serve my constituents effectively to the utmost of my ability. I am not going to hide. I am ready to face the challenge."

Solon, a 13-year legislative veteran,

Solon continued on page 4B

## Solon Continued from page 3B

was stopped by a State Patrol officer at about 11:30 p.m. May 13 on Interstate Hwy. 35 near Barnum, Minn. The officer said Solon's car was clocked at 64 m.p.h. and he veered across the two northbound lanes of the highway.

When Solon was arrested, he refused to take breath and blood alcohol tests, claiming that, as a legislator, he was immune from arrest.

Later, Solon said he had not intended to use legislative immunity to

block prosecution, only to delay his court appearance until the Legislature ended its session.

"I had it coming," Solon said of his sentence. "It's a tough sentence, but a fair one."

He said drunken driving is a serious problem in Minnesota.

"Even though I made a mistake and got caught, I supported tightening up every law (dealing with drunk driving penalties)," he said.

## State Legislator, Charged With Drunk Driving

Frank J. Theis, third-term DFL state representative from Winona, Minn., has been charged by Minneapolis police with drunken and careless driving after an incident last April, police said Monday.

Theis was charged June 13 in a complaint signed by Officer William Chaplain before Judge Edwin T. Chapman. The complaint said a car driven by Theis was chased for more than six blocks "at speeds between 45 and 60 miles an hour" before being forcibly stopped. The incident occurred about 12:30 a.m. April 25 on S. 6th St. near the entrance to Interstate Hwy. 94.

Theis was served with the complaint Friday and was expected to appear in Hennepin County Municipal Court before July 1. Legislators are immune from arrest in most instances during the legislative session.

In describing Theis's condition, the complaint alleged that "his breath smelled of alcoholic beverage," his eyes were bloodshot and his walk unsteady.

Reached for comment at his home in Winona yesterday, Theis said, "I've never been drunk in my life, I've never claimed immunity from arrest. I don't know anything about it."

THE MINNEAPOLIS STAR  
Sat., July 5, 1969 ★ 17A

## Theis pleads innocent, wants jury

A state legislator from Winona, Minn., has pleaded innocent and requested a jury trial on charges of drunken and careless driving filed because of an alleged incident in the 1969 legislative session.



Frank J. Theis, a third-term DFL representative, had been scheduled to appear in Hennepin Municipal Court last Thursday on the charges.

The request for a jury trial was filed Wednesday.

According to Minneapolis police reports, Theis claimed legislative immunity from arrest when he was stopped by two Minneapolis patrolmen about 12:30 a.m. April 25.

The policemen released Theis and a companion because the Minnesota constitution allows some privilege from arrest during the session.

Theis was charged by complaint June 2 and served with the warrant June 20. His first court appearance was June 26.

At that time the case was continued one week without a plea. His case was expected to be placed on the jury calendar.



# Smelled Drink, Officer Testifies

ST. P. PIONEER PRESS  
By ASSOCIATED PRESS

A Minneapolis policeman testified Tuesday that State Rep. Frank Theis appeared to be intoxicated after police stopped his car on April 25, 1969.

Sgt. Ronald Pieri testified in Hennepin County Court before Municipal Judge Donald Burris that he refused to allow the Winona DFLer to continue to drive his car after the legislator's car was stopped on an interstate highway entrance ramp.

Pieri said he decided he could not arrest Theis because the legislature was in session and the lawmaker was protected from arrest

by legislative immunity.

Policeman William Chaplin testified that Theis was driving more than 40 miles an hour in a 30 m.p.h. zone in south Minneapolis and that he did not stop his car when Chaplin turned on a red light and siren.

Chaplin said he forced the Theis car to the side of the

5/20/70  
road and stopped it. He said he could smell alcohol on Theis' breath.

Theis testified Monday that he had one drink that night.

Defense attorney Gerald Singer argued that no testimony on what Theis said

after his car was stopped should be taken as evidence because of his legislative immunity.

The judge ordered both sides to file briefs on the question and scheduled a hearing for July 20 to rule on the issue.

Theis,  
Frank J.

## After long delay, legislator agrees to drunk-driving trial

By BOB SCHRANCK  
Minneapolis Star Staff Writer

A state legislator from Winona, who originally invoked legislative immunity in a Minneapolis drunk-driving arrest, and then had his case delayed 11½ months with a jury demand, Monday waived his right to a jury and demanded an immediate trial.

The move by Frank J. Theis, a third-term DFLer in the House, caught the city attorney's office by surprise and without the necessary witnesses subpoenaed.

Hennepin County Municipal Judge Donald Burris allowed a continuance only until the afternoon to allow Asst. City Atty. Fred Spencer to obtain his witnesses.

Only one officer, Patrolman William Chaplin, was located on the short notice.

The case was continued to today after Chaplin and Theis testified, but Judge Burris said he would allow no other prosecution witnesses.

Milton Gershin, head of the criminal division of the city attorney's staff, said later that his office had been led to expect a guilty plea on the charges and hence did not subpoena the witnesses. Theis also had been charged with careless driving.

According to another assistant city attorney, Edward Vavreck, during a pre-trial conference April 15 before Chief Judge Edwin Chapman, Theis' attorney, Gerald Singer, was refused a request to allow his client to plead guilty to the careless driving charge.

Vavreck said a trial date was then set for May 15.

According to Gershin, Singer called the Municipal Court assignment clerk last

Thursday, said he was tied up in San Francisco and requested a continuance to Monday, stating that he planned to plead his client guilty at that time.

"On the basis of this information, we felt we didn't have to bring the officers in," Gershin said. "And if it was a jury trial, there still would be time during the selection of a jury."

Spencer protested the waiver, since it did not occur during the pre-trial conference, but Judge Burris ruled against him.

A dismissal of all charges for lack of prosecution witnesses did not occur because Chaplin walked into court shortly after the trial started and Spencer was still arguing for a continuance.

The only spectator in the court was a reporter.

Chaplin testified that he and a partner followed Theis' car onto an entry ramp for I-94 from 6th St. near Park Av., but couldn't stop the vehicle until they forced it over.

The incident occurred about 12:30 a.m. April 25, 1969. Theis was charged by complaint June 2.

Singer was overruled when he objected that any conversation between the defendant and the officer could not be used in court because legislative immunity made the arrest an illegal one.

Theis testified that he had just one drink during the evening prior to the incident. He said he had been at the Capitol from 7 a.m. to 10 p.m., then stopped at the St. Paul Hotel before coming to Minneapolis.

He also said he was under medical care several days prior to the incident.

# Legislator's drunk-driving trial delayed

By BOB SCHRANCK

Minneapolis Star Staff Writer

The drunken-driving trial of Winona legislator Frank J. Theis was continued Tuesday to July 20 to allow both sides to prepare legal briefs.

The briefs ordered by Hennepin County Municipal Judge Donald Burris will be primarily concerned with legislative immunity — how it must be invoked by a holder, and if it is invoked, how admissible evidence must be obtained.

At the request of Theis' defense attorney, Gerald Singer, Judge Burris also allowed the briefs to contain the general argument on court testimony.

Singer today accused the city attorney's office of renegeing on "a firm deal made because they were not interested in advertising some acts of misconduct by the police at the scene."

Singer said the alleged misconduct referred to the handcuffing of Theis, who testified Monday that his wrists were bleeding from the tight handcuffs.

He said he came to court Monday expecting to plead Theis guilty to a careless-driving charge.

Theis invoked his legislative immunity on April 25, 1969, when two Minneapolis police officers arrested him, then later released him to a supervisor.

That supervisor, Sgt. Ronald Pieri — the one witness to testify Tuesday — said he felt neither Theis nor his passenger, State Rep. Louis A. Murray, East Grand Forks, was in any condition to drive.

Pieri said he recognized from the credentials that Theis had immunity from arrest since the Legislature was then in session. He said he drove the two men to a restaurant at 5th St. and Hennepin Av. to drink coffee before they drove back to St. Paul. A patrolman drove Theis' car to the restaurant, Pieri said.

He said the car remained there a minimum of 45 minutes.

Pieri also testified that he and Theis were present

when Murray allegedly said, "Let's go Frank. You know we were out drinking and got drunk. We're wrong. So let's get outta here."

Theis testified Monday that he did not hear Murray say this, and also that he didn't recall Pieri saying he should not drive his car.

He stated Monday that he had only one drink after leaving the Legislature at 10 p.m., stopping at the St. Paul Hotel, and then visiting three Minneapolis bars. Police stopped his vehicle on the 6th St. entry to Hwy. 94 about 12:30 a.m.

Singer said today that Asst. City Attorney Edward Vavreck had admitted difficulty in proving his case during a pre-trial conference April 15 and then made "an absolute firm deal" to accept a guilty plea to careless driving with two conditions — permission from the police officer and also from Milton Gershin, head of the criminal

division of the city attorney's staff.

When Gershin did not give his permission for the "deal," Singer said, Vavreck told him he would take care of it with the attorney who was trying the case.

Concerned with the last-minute waiver of a jury on a case that was delayed 11½ months to be heard by a jury, Singer said "I told Vavreck all along that if I had to try it I would waive a jury because the question of immunity is more a legal problem."

He said Gershin told him there was a note on the city attorney's case that there would be a guilty plea entered, and that Gershin interpreted it to mean guilty plea to the charge.

"That ridiculous," Singer said. "That just means he will plead to something. We were the ones misled, not the city attorney's office."

Vavreck said today the accusations by Singer were

completely false and, "I stand on the pretrial order signed by Judge Chapman, April 15, setting this matter down for trial on May 15."

He said that no negotiations were entered into "because Mr. Singer refused to have his client plead guilty to the main charge of driving under the influence of an intoxicating beverage."

Vavreck added that Singer at that time offered to plead his client guilty to careless driving and the offer was rejected by Vavreck.

MPLS. STAR *July 31, 1970* 3

# Legislator loses immunity battle

A state legislator is not immune from arrest under a charge of driving under the influence of liquor or a charge of careless driving, a Hennepin County Municipal Court judge ruled today.

Judge Donald S. Burris made the ruling in the case of Rep. Frank J. Theis, Winona, who was arrested for drunken and careless driving April 25, 1969, while the Minnesota Legislature was in session.

Theis had claimed im-

munity from arrest on the two traffic charges on the constitutional provision that "members of each house shall in all cases, except . . . breach of the peace, be privileged from arrest during the session of their respective houses."

The judge found that the traffic violations constituted a breach of the peace and that "the constitution of the state of Minnesota was never intended as a sanctuary for legislative members who have committed a public offense."

Judge Burris found Theis not guilty of the charge of driving under the influence. Theis paid a \$50 fine for careless driving.

*Theis, Frank J.*

## Legislator Ruled Not Immune to Traffic Arrest

MPLS. TRIBUNE  
A61 70

A state legislator is not immune from arrest on a charge of drunken driving or a charge of careless driving, Hennepin County Municipal Judge Donald S. Burris ruled Friday.

Rep. Frank J. Theis, Winona DFLer, had been arrested on the two charges April 25, while the Minnesota Legislature was in session.

Judge Burris found Theis not guilty yesterday on the drunken driving charge. But he found the legislator guilty of careless driving and fined him \$50.

Theis had claimed immunity from arrest on the basis of the state Constitution, which says the "members of each house shall in all cases, except treason, felony and breach of the peace, be privileged from arrest" during legislative sessions.

The judge called the driving charges in this case serious. And he said they constituted a breach of the peace, hence no legislative immunity.

## POLICE AND COURTS

# Legislator Is Fined For Careless Driving

A state legislator from Winona who had claimed immunity from a 1969 drunken driving charge was fined \$50 for careless driving today in Municipal Court, Minneapolis.

The lawmaker, Rep. Frank Theis, 51, Liberal-Winona, was found innocent of the drunken driving charge by Judge Donald Burris but guilty of careless driving. Theis paid the fine.

Minneapolis police said they arrested Theis April 25, 1969 — while the state legislature was meeting — after a six-block chase at speeds ranging from 45 to 60 m.p.h. through downtown Minneapolis.

Officers said Theis claimed immunity from arrest because the state Constitution grants legislators such immunity except on charges of treason, felony or breach of peace while lawmakers are in session.

Burris conducted a hearing May 20 this year without a jury, then made his findings on the charges today. Burris said he regards the careless driving arrest and charge as a breach of peace violation and thus outside the immunity granted lawmakers.

A police sergeant had testified at the May 20 hearing that he refused to allow Theis to continue driving after stopping his car on an I-94 ramp entrance. A second officer who chased Theis' car testified that he could smell alcohol on Theis' breath. Theis denied the intoxication charge.

In his findings, Judge Burris noted that the state Constitution "was never intended as a sanctuary for legislators who commit a public offense."

Theis was not charged with the offenses by police until 50 days after the April 25 incident. By that time, the legislature had adjourned.

## LEGISLATOR CHARGED

## Policemen Testify About Driving Case

MPLS. TRIBUNE

A Minneapolis policeman testified Tuesday that State Rep. Frank J. Theis, Winona DFLer, appeared to be intoxicated after his car was stopped by the police April 25, 1969.

Sgt. Ronald Pieri told Donald Burris, Hennepin County municipal judge, that he refused to allow Theis to continue to drive his car after he was stopped on an interstate highway entrance ramp.

He decided he could not arrest Theis, Pieri testified, because the Legislature was in session and Theis was protected from arrest by legislative immunity.

The case was nearly dismissed Monday morning because Asst. City Atty. Fred Spencer thought Theis was going to plead guilty to a charge of driving while intoxicated and prosecution witnesses were not in court to testify.

Theis' attorney, Gerald Singer, told Judge Burris that Theis would plead guilty to a charge of careless driving, but not to the charge of driving while intoxicated.

Judge Burris ordered Spencer to collect his witnesses by 2 p.m. that afternoon.

At 2 p.m., Spencer began arguing for a delay in the trial until he could contact his witnesses, most of whom were out of the city. About 2:15, policeman William Chaplin walked into the courtroom and took the witness stand. If he had not appeared, Judge Burris could have dismissed the charges.

Chaplin testified that Theis was driving more than 40 miles per hour in a 30-m.p.h. zone on S. 6th St. and that he did not stop his

car when Chaplin turned on a red light and siren.

He forced the Theis car to the side of the road and stopped it on the entrance ramp, Chaplin said. He said he could smell alcohol on Theis' breath.

Theis testified Monday that he had one drink that night.

Singer argued that no testimony on what Theis said



Theis

after his car was stopped should be taken as evidence because of his legislative immunity.

Judge Burris ordered both sides to file briefs on the question and scheduled a hearing for July 20, when he will decide whether to accept that portion of the testimony.



MONDAY, JUNE 23, 1969

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Theis,  
Frank J.

## Legislator who invoked immunity now faces two traffic charges

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A state legislator from Winona, Minn., who invoked his immunity from arrest during the 1969 legislative session, has been charged with two traffic violations by Minneapolis police, police said today.



Frank J. Theis, a third-term DFLer in the Minnesota House, was charged June 2 with drunken driving and careless driving in a complaint signed by a member of the Minneapolis police tactical squad.

According to the complaint, a car driven by Theis was pursued "over six blocks at speeds between 45 and 60 miles an hour before being stopped forcibly." The incident occurred on 6th St. near Park Av. S. about 12:30 a.m. April 25.

Police reports say State Rep. Louis A. Murray, East Grand Forks DFLer, was a passenger in the Theis car.

The attitudes of both men was reported by police as being "belligerent and threatening."

The arresting officers said they had difficulty stopping the car, but finally forced it to the side of the road near the entrance to Interstate Hwy. 94. They said a brief scuffle took place, after which they said they were told that legislators have immunity from arrest during the session.

A police sergeant called to the scene verified this for the officers, who then released

the two men and the car, police said.

Section 8 of the Minnesota Constitution refers to privilege from arrest as follows: "The members of each house shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during the session of their respective houses, and in going to or returning from the same."

The Minneapolis officers, on the advice of the police department legal adviser, waited until the session ended before filing the complaint, police said.

Theis was served with the complaint Friday and was expected to appear in Hennepin County Municipal Court on the charges this week.