O'CONNELL, C. J., dissenting. I cannot concur with the majority decision.

The commissioner, through his hearing officer, found that the plaintiff refused to submit to a breath test at a different police station, believing that he had already performed a test.[1] The record shows that the plaintiff submitted to at least one, and possibly two, breath tests. It is clear that the equipment employed at state police Troop F malfunctioned and proved inadequate to furnish the police with a result that would effect a suspension of the plaintiff's operator's license. The plaintiff contends that, after submitting to two breath tests, he was not required to travel to another town to provide a third breath sample.

I am unable to find, in the plain language of the statute, any suggestion that, if the police are unable to complete their responsibilities due to defective equipment, an operator's license will be suspended if the operator refuses to be taken from one town to another in order that further testing might be conducted. The record supports a conclusion that the plaintiff refused to go from Troop F in Westbrook to Old Saybrook, but such conduct does not amount to a refusal within the

statute. If a refusal to go from one town to another is to constitute the refusal referred to in the implied consent statute, this must be accomplished by the General Assembly and not by judicial construction. This court must construe the statute as it finds it without reference to whether the court feels that the law might have been improved by the inclusion of other provisions. *Houston* v. *Warden*, 169 Conn. 247, 252, 363 A.2d 121 (1975).

In *Bialowas* v. *Commissioner of Motor Vehicles*, 44 Conn. App. 702, 714–15, 692 A.2d 834 (1997), we held that ''where it is undisputed that the motorist submitted to the chemical alcohol test, the fact that he failed to provide an adequate breath sample does not automatically constitute refusal within the meaning of [General Statutes] § 14-227b. Such refusal must be supported by substantial evidence. A conclusory statement by the arresting officer that the driver has failed to provide an adequate breath sample and has, therefore, refused, does not constitute such evidence.''

There is insufficient evidence in the present case to support the hearing officer's decision that there had been a statutory refusal to take the test. In the present case, as in *Bialowas*, it is undisputed that the plaintiff orally consented to take a breath alcohol test. The plaintiff, in fact, actually submitted to two tests. At that point, the plaintiff had satisfied his obligations under § 14-227b (b). The plaintiff simply refused, however, to be taken to another town after the intoxilyzer at Troop F malfunctioned.

I am sympathetic with efforts strictly to enforce our operating under the influence laws. ''Nevertheless, in our endeavor to rid our roads of these drivers . . . we cannot trample on the constitutional rights of other citizens. They are entitled to a fair hearing. . . . An operator's license is a privilege that the state may not revoke without furnishing the holder of the license due process as required by the fourteenth amendment.'' (Citation omitted; internal quotation marks omitted.) Id., 718.

For the foregoing reasons, I respectfully dissent from the decision of the majority and would reverse the trial court's decision.

[1] The hearing officer's subordinate findings of fact provide in relevant part as follows: ''As the machine was not properly working, the [plaintiff] was requested to submit to a test at another station, which he refused, as he believed he had already performed a test. The record does not support the [plaintiff's] testimony.''

The plaintiff testified as follows at the hearing:

''Q. [W]ere you asked to take a Breathalyzer test?

''A. Yes.

''Q. And did you agree to do so?

''A. Yes, I did. . . .

''Q. You took the test two times?

''A. Two times.''