

Opinion No. 46-4972

December 20, 1946

BY: C. C. McCULLOH, Attorney General

TO: Driver's License Division Bureau of Revenue Santa Fe, New Mexico. Attention: Mr. Pete Baca, Director

{*292} This is to acknowledge receipt of your letter of December 17, 1946, in which you set out the following fact situation:

A resident of the State of New Mexico, who had a New Mexico driver's license, was charged with and convicted of "Illegal Transportation of Intoxicating Liquor" in the State of Oklahoma. The Oklahoma authorities suspended his driver's license for a period of twelve months.

Based upon those facts, you request the opinion of this office as to {*293} whether you have authority to suspend or revoke that man's driver's license in this state for a period of one year.

Section 68-317 of the N.M. 1941 Compilation enumerates the crimes, a conviction of which calls for a mandatory revocation of a driver's license by the Department. The only subsection of this act which seems pertinent to the determination of our question, is subsection 4 of Section 68-317, which provides as follows:

"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 was used." (Emphasis ours.)

Section 68-318 of the N.M. 1941 Compilation provides, in part, as follows:

"(c) The Commissioner is hereby authorized to recommend to the department the suspension or revocation of the license of any resident of this state **upon receiving notice of the conviction of such person in another state of an offense therein which, if committed in this state, would be ground for the suspension or revocation of the license of such operator or chauffeur.** * * *" (Emphasis ours.)

In order to determine whether, in this instance, you have the authority to revoke the driver's license, we must look to the laws of New Mexico to determine whether "Illegal Transportation of Intoxicating Liquor" in this state would constitute a felony.

Section 61-1008 of the N.M. 1941 Compilation provides, in part, as follows:

"(b) It shall be a violation of this act for any person other than a registered common carrier to transport from another state, and deliver to this state, any alcoholic liquor unless such person has in his possession on entering the State of New Mexico a permit

from the division for the quantity and class of liquor to be delivered, and designating the name of the shipper and consignee, and the point of origin and destination of such liquor.

"(c) It shall be a violation of this act for any person to transport alcoholic liquors out of the State of New Mexico without proper excise stamps affixed to the cases and containers thereof as required by Article 9 (Secs. 61-701 -- 61-713) of this act, unless the shipment is accompanied by a permit issued by the division for the exact quantity and class so transported showing the consignee's federal and state license numbers and the point of origin and destination of such alcoholic liquors."

The Supreme Court of New Mexico, in the case of State v. Martinez, 48 N.M. 232, 149 P. 2d 124, held that Section 61-1008, subsections (b) and (c), did not prohibit the bringing of intoxicating liquor into the state by any person for his personal use.

Section 61-1019 of the N.M. 1941 Compilation apparently makes a violation of Section 61-1008, above, a **misdemeanor**.

There is a question as to whether the acts committed in Oklahoma would have constituted a crime in New Mexico. Even if we assume, however, that the acts committed in Oklahoma would have constituted a crime in New Mexico, that crime would have been the result of a violation of Section 61-1008 of the N.M. 1941 Compilation, subsections (b) or (c), and punishable as a **misdemeanor, and not as a felony**.

In view of the above, I am of the opinion that, in this particular case, you are not authorized to revoke the driver's license.

By WM. R. FEDERICI,

Asst. Atty General