

## Opinion No. 48-5172

September 29, 1948

**BY:** C. C. McCULLOH, Attorney General

**TO:** Charles L. Rose Superintendent of Public Instruction Santa Fe, New Mexico.  
Attention /- J. T. Reece, Director School Transportation

{\*167} We have your letter of September 27, 1948 requesting the opinion of this office upon a matter which may be summarized as follows:

Some twenty schools throughout the state are offering Driver Education and Training Courses. Students obtain instruction permits from the Driver's License Division under the provisions of Section 68-307 N.M.S.A. 1941 Compilation. The equipment used is a specially built passenger car with dual controls -- one set for the student driver and one set for the instructor, who is present in the car at all times.

You ask whether it is permissible for students other than the one driving to ride in the car during the instruction period and state that it will be impossible to complete the course of training if such a practice is impossible.

This matter is covered by Section 68-307 N.M.S.A. 1941 Compilation, which reads as follows:

"The department, upon receiving from any person over the age of fourteen (14) years an application for a temporary instruction permit may issue such permit entitling the applicant, while having such permit in his immediate possession, to drive a motor vehicle **upon the highways** for a period of sixty (60) days when accompanied by a licensed operator or chauffeur who is actually occupying a seat beside the driver **and there is no other person in the vehicle.**"

If this section is applicable to the Driver Education and Training Program, other passengers, including students, would be violating the act by riding in the car, for the wording "and there is no other person in the vehicle" is all inclusive. While this act was passed before such a program as this was instituted, and the Legislature probably did not contemplate it, it is my opinion that the act is broad enough to cover the program in question.

Section 68-302 N.M.S.A. 1941 Compilation, provides in part as follows:

"No person, except those hereinafter expressly exempted shall drive any motor vehicle upon a highway in this state unless such person has a valid license as an operator or chauffeur under the provisions of this act."

The instruction permits referred to in Sec. 68-307 are the only applicable exception in this particular instance. Therefore, student drivers would necessarily have to have instruction permits, which are only valid when a licensed operator or chauffeur is sitting beside the driver and no other person is in the car.

I call your attention to the fact that this section refers only to driving upon the highways. If the course could be conducted upon roads other than highways, Section 68-307 would not apply and the presence of student passengers {*\*168*} would be permissible. In this connection, highways are defined by Section 68-301 (i), N.M.S.A. 1941 Compilation, as follows:

"Every way or place of whatsoever nature open as a matter of right to the use of the public for the purpose of vehicular travel. The term 'highway' shall not be deemed to include a roadway or driveway upon grounds owned by private persons, colleges, universities or other institutions."

Further, Section 68-327 N.M.S.A., 1941 Compilation provides:

"(a) It shall be a misdemeanor for any person to violate any of the provisions of this act, unless such violation is by this act or other state law declared to be a felony.

(b) Unless another penalty is by this act or other laws of the state provided every person convicted of a misdemeanor for the violation of any provision of this act shall be punishable by a fine of not more than one hundred dollars (\$ 100.00) or by imprisonment in the county jail of the county wherein the offense is committed for not more than ninety (90) days, or by both such fine and imprisonment."

It is, therefore, my opinion that students in Driver Education courses in the schools of the state, in order to validly operate a motor vehicle upon the highways must possess an operator's or chauffeur's license, or an instruction permit. If such students have an operator's or chauffeur's license, other students may accompany the driving student and the instructor. If, however, the student driver possesses merely an instruction permit, he may be accompanied only by the instructor, who must be a licensed operator or chauffeur and who must occupy the seat beside the driver.

It is further my opinion that a violation of the above would constitute a misdemeanor as defined in Section 68-327.

By WALTER R. KEGEL,

Asst. Atty. General