

**Opinion No. 53-5769**

June 26, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Rosendo Garcia Director, Drivers' License Division Bureau of Revenue Santa Fe, New Mexico

{\*168} In your letter dated June 18, 1953, you refer to §§ 68-305(f), 68-317 and 68-319 (b) of the 1941 Compilation, as amended, and you also refer to § 55(a) and § 55(c) of the 1953 Uniform Traffic Code, which is Ch. 139, Laws of 1953. These section to which reference is made are set out as follows:

§ **68-305(f)**. -- "The department shall not issue an operator's or chauffeur's license to any person who has been four (4) times in any one twelve (12) months' period convicted of reckless driving under this, or any other New Mexico statute relating thereto, or under the ordinances of any municipality which define the term "reckless driving" substantially like the laws of this state."

§ **68-317(a)**. -- "the department shall forthwith revoke the license of any person upon receiving a record of conviction of such person of any of the following crimes, whether such conviction be had under any state law or local ordinance:

(1) --

(2) --

(3) --

(4) --

(5) -- Conviction of or forfeiture of bail on three (3) charges of reckless driving all within the preceding twelve (12) months." § **68-319(b)**. -- "Whenever any person holding an operator's or chauffeur's license shall be convicted upon the charge of reckless driving or speeding, or any misdemeanor in the commission {\*169} of which a motor vehicle was used, in court may, in its discretion, suspend the license of such person for a period not to exceed ninety (90) days upon a first conviction and for a period not to exceed six (6) months upon a second conviction, and for a period not to exceed one (1) year upon third conviction; Provided, that any suspension of a license under this act shall not be for a period in excess of one

(1) year."

§ **55**. -- Reckless driving "(a) Any person who drives any vehicle carelessly and heedlessly in willful or wanton disregard of the rights or safety of others or without due

caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property, is guilty of reckless driving.

(b) --

(c) -- Upon conviction of violation of this section the court or the Commissioner of Motor Vehicles may suspend the license or permit to drive and any nonresident operating privileges for a period not to exceed 90 days."

You ask this office to clarify the periods of suspension or revocation in view of the apparent conflict in some of the sections.

§ 68-305(f) is not affected by the 1953 Act and prohibits you from issuing an operator's or chauffeur's license to any person convicted of reckless driving four (4) times in any twelve (12) months period.

§ 68-317(a) (5) is likewise not affected by the 1953 Act and makes it mandatory for you to revoke the license for a period not to exceed twelve (12) months of any person convicted on three (3) charges of reckless driving within a period of twelve (12) months.

§ 68-319(b) authorizes the Court to impose varying periods of revocation or suspension for conviction on the charges of reckless driving or speeding or any misdemeanor in the commission of which a motor vehicle was used. This section is superseded to some extent in so far as the Court's power is concerned by the new Act which limits the Court's power to a suspension of the license or non-resident permit for a period not to exceed ninety (90) days for each conviction.

§ 55 of the new Act also authorizes the Commissioner of Motor Vehicles to suspend the license or permit of any one convicted of reckless driving for a period not to exceed ninety (90) days although if the Court should suspend for a period less than ninety (90) days the Commissioner would not be authorized to suspend for any additional part of the ninety (90) days not imposed by the Court.

Under said § 55, the Court may not suspend for other misdemeanors in which a motor vehicle was used but as to such misdemeanors could continue to impose the periods of suspension provided in § 68-319(b).

Trusting that this answers your inquiry, I am

By: C. C. McCulloh

Assist. Attorney General