

Opinion No. 59-06

February 2, 1959

BY: FRANK B. ZINN, Attorney General

TO: Office of the District Attorney Eighth Judicial District Clayton, New Mexico.
Attention: Mr. Roger L. Simon Assistant District Attorney

1. A suspension of a driver's license can be made by the Bureau of Revenue if the driver is convicted in municipal court for driving while intoxicated even though the person convicted takes an appeal to the district court.
2. The licensee may demand a hearing on the suspension and obtain a hearing within 20 days following the request for the hearing, and if the hearing is not allowed, the suspension would be invalid.

OPINION

{*11} This will acknowledge receipt of an opinion request in which the following questions were raised:

1. Where a person has been convicted in municipal court of driving while intoxicated and an appeal is taken to the district court, does the Bureau of Revenue, Division of Motor Vehicles have the power to suspend the driver's license of such person pending appeal?
2. If, under the above fact situation, the Bureau enters an order of suspension under Section 64-13-60, N.M.S.A., 1953 Compilation, 1957 Pocket Supplement, and refuses to set a hearing within twenty days, as provided by such section, is such suspension invalid?

Section 64-13-58, 64-13-59 and 64-13-60, N.M.S.A., 1953 Compilation, 1957 Pocket Supplement, appear to be controlling in regard to the above questions.

In brief, Section 64-13-58 provides that every court having jurisdiction over offenses committed under the so-called Uniform Motor Vehicle Operator's and Chauffeur's License Act (64-13-31 to 64-13-78) shall forward to the Motor Vehicle Division a record of the conviction of any person in the said court of violations of any of the laws of the said act and may recommend the suspension of the operator's license of the person so convicted.

Section 64-13-59, supra, states that the Motor Vehicle Division of the Bureau of Revenue shall forthwith revoke the license of any {*12} operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction for driving a motor vehicle

while under the influence of intoxicating liquor, provided the conviction has become final. This section, it should be noted, applies only when the conviction is final

Section 64-13-59, supra, provides that when the records of the Motor Vehicle Division, or other sufficient evidence, shows that the driver has committed a **revokable** offense, including driving while intoxicated, or when other facts are shown such as participating in a serious accident, the Division may **suspend** the driver's motor vehicle license. This section further provides for a hearing within twenty days following a request from the licensee for such a hearing.

Applying the above sections to the first question raised, I am of the opinion that where a person has been convicted in municipal court of driving while intoxicated and an appeal is taken to the district court, the Bureau of Revenue, Division of Motor Vehicles does have the power to suspend the driver's license of such person pending appeal.

By virtue of Section 64-13-58, supra, the Motor Vehicle Division is notified of the police court conviction on operating a motor vehicle while being intoxicated. Section 64-13-59, supra, requires mandatory revocation of a driver's license, but only if the conviction has become final. Hence, where an appeal is taken to district court, the license should not be revoked due to the lack of a final judgment.

Section 64-13-60 does, however, provide the Bureau with authority to suspend a license without a preliminary hearing if a showing by its records indicates that the licensee has **committed** an offense for which mandatory revocation is required upon conviction and final judgment.

Thus, it appears that the Bureau may suspend a license even though it lacks authority to revoke the license because the judgment of the municipal court has not become final. The practical effect of the suspension is to deprive a motor vehicle operator convicted of driving while intoxicated of his license pending appeal of his conviction from the municipal court.

Section 64-13-60, providing for suspension of a motor vehicle license, also contains a provision for a hearing following suspension of the license of any person as authorized in the said section, the licensee upon request shall be afforded the opportunity of a hearing as early as practical, not exceeding twenty days after receipt of such request.

This section, I believe, is determinative with respect to your second question. The hearing on the suspension is apparently independent of any procedure which may have taken place in the municipal criminal court. Furthermore, it would appear that the suspension penalty is merely permissive and the Division might wish to reconsider its suspension.

In view of the above, if the Bureau enters an order of suspension under Section 64-13-60 and refuses to set a hearing within twenty days as provided by the section, the suspension is invalid.

Fred M. Calkins, Jr.