

Opinion No. 60-167

September 21, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. Emilio Naranjo Administrator Driver Services Division P. O. Drawer D Santa Fe, New Mexico

QUESTION

QUESTION

Is a nonresident person whose out-of-state operator's license is suspended under the laws of this state entitled to a hearing?

CONCLUSION

Yes.

OPINION

{*558} **ANALYSIS**

Your question is precipitated by a fact situation wherein a nonresident driver operating under an out-of-state driver's license was convicted by a municipal court of driving while intoxicated. Following receipt of the court's abstract, your office revoked the person's license and mailed it together with a copy of the revocation order to the state which originally issued the license. Now you advise that the conviction has been appealed and the person has requested a hearing under authority of § 64-13-60, N.M.S.A., 1953 Compilation.

In view of the appeal from the municipal court conviction, it appears that the revocation order of your office is nullified since such order is not permissible until the conviction has become final. Attorney General's Opinion No. 59-6, dated February 2, 1959. Of course, once such conviction does become final, the revocation is mandatory in view of the provisions of § 64-13-59, N.M.S.A., 1953 Compilation.

Your principal inquiry appears to be directed to the question of whether a nonresident driver whose license is revoked or suspended under the laws of this state should be accorded any treatment different from that of a resident operator operating under a New Mexico license.

In response to this question, your attention is directed to § 64-13-56, N.M.S.A., 1953 Compilation. Subsection (a) of that section provides as follows:

"The privilege of driving a motor vehicle on the highways of this state given to a nonresident hereunder shall be subject to suspension or revocation by the division **in like manner and for like cause** as an operator's or chauffeur's license issued hereunder may be suspended or revoked." (Emphasis added.)

In view of the above section, it appears clear that the procedures employed and the causes for which a nonresident license may be suspended or revoked are identical with that for the suspension or revocation of a resident operator's license.

Section 64-13-60, N.M.S.A., 1953 Compilation, authorizes the suspension of an operator's license when it appears that the licensee has committed an offense for which mandatory revocation of license is required upon final conviction. Final conviction of the offense of driving a motor vehicle while under the influence of intoxicating liquor is cause for mandatory revocation of an operator's license. Therefore, in the absence of a final conviction of such charge, it appears that your division is authorized to suspend the license of an operator.

However, subsection (b) of § 64-13-60, the authority under which you may suspend licenses, provides for a hearing "within not to exceed twenty (20) days after receipt" of the request for a hearing. Following such hearing the {*559} division "shall either rescind its order of suspension or, good cause appearing therefor, may continue, modify or extend the suspension of such license or revoke such license." § 64-13-60 (b).

Therefore, in conclusion, it is our opinion that a nonresident operating under an out-of-state operator's license shall be accorded like treatment afforded resident operators in relation to any suspension or revocation orders. In view of the facts set forth by you, it further appears that the order of revocation issued by you is now a nullity, but an order of suspension may be issued and a hearing held upon request by the licensee. Following such hearing, you may either rescind the order of suspension or continue, modify or extend the same, depending upon the findings elicited by you upon the relevant testimony and evidence introduced.

By: Thomas O. Olson

First Assistant Attorney General