

## Opinion No. 65-124

July 9, 1965

**BY:** OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

**TO:** Mr. Benny E. Sanchez, Commissioner, Department of Motor Vehicles, Santa Fe, New Mexico

### QUESTION

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Is the limited driving permit provision contained in Chapter 251, Laws 1965, applicable to persons who were convicted of driving while intoxicated prior to 12:01 A.M. on June 18, 1965?

#### CONCLUSION

No.

### OPINION

#### {\*211} ANALYSIS

The 1965 Legislature amended Section 64-22-2, N.M.S.A., 1953 Compilation to add the following:

"E. The district court may, for good cause, shown, in lieu of revocation, limit the license, permit or privilege of any person convicted under this section, provided the limitation shall be allowed by the district court only for the purpose of allowing the **convicted person** to engage in gainful employment. The commissioner shall issue a limited license or permit to the person immediately, showing thereon the limitations imposed by the district court. The limited license or permit may be revoked by the district court of this state in the discretion of the district court." (Emphasis added)

Statutes are presumed to operate prospectively only and will not be given a retroactive affect unless such intention on the part of the legislature is clearly apparent. **Bradbury & Stamm Construction Co. v. Bureau of Revenue** 70 N.M. 226, 372 P.2d 808; **Clark v. Ruidoso-Hondo Valley Hospital**, 72 N.M. 9, 380 P.2d 168. We find no indication in Chapter 251, Laws 1965, that the legislature intended the limited license provision to apply to persons convicted prior to the effective date of the amendment.

Another point to keep in mind as to this amendment is Article IV, Section 33, New Mexico Constitution. That section provides as follows:

"No person shall be exempt from prosecution **and punishment** for any crime or offenses against any laws of this state by reason of the subsequent repeal of such law."  
(Emphasis added)

It would seem to us that revocation of a driver's license is punishment. And prior to enactment of the limited license provision it was mandatory that the license of a person convicted of driving while intoxicated be revoked for one year. Section 64-13-59, N.M.S.A., 1953 Compilation. This act thus has the effect of repealing a mandatory punishment provision.

In determining whether a person may be eligible for a limited driver's license, Section 64-13-58, N.M.S.A., 1953 Compilation (P.S.) must be examined. Paragraph B of this section provides that for purposes of Sections 64-13-59 and **64-22-2** "the terms 'conviction' and 'convicted' mean that the alleged violator has entered a plea of guilty or been found guilty in the trial court and has waived or exhausted all of his rights to an appeal."

We conclude then that only persons convicted of driving while intoxicated after 12:01 A.M. on June 18, 1965, as the term "convicted" is defined in Section 64-13-58, are {\*212} eligible to seek a limited license under Section 64-22-2.