

Opinion No. 65-226

November 22, 1965

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

TO: Mr. Ethan K. Stevens, City Attorney, City Hall, Clayton, New Mexico

QUESTION

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Does a Municipal Court have power under Section 40A-29-15, N.M.S.A., 1953 Compilation, or any other statute to change a conviction of operating a motor vehicle while intoxicated so the convicted defendant will not lose his driver's license under Section 64-13-59, N.M.S.A., 1953 Compilation?

CONCLUSION

No.

OPINION

{*371} ANALYSIS

Section 64-13-59, supra, provides, in pertinent part:

"Mandatory revocation of license by division. -- The division shall forthwith revoke the license of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction of any of the following offenses, whether such offense be had under any state law or local ordinance, when such conviction has become final:

. . .

2. Driving a motor vehicle while under the influence of intoxicating liquor, narcotic drug, or any other drug which renders him incapable of safely driving a motor vehicle; Provided, that for the purpose of this act marijuana (Cannabis indica) shall be classified as a narcotic drug. . . ."

The terms "convicted" and "conviction" are defined in Section 64-13-58 (B), N.M.S.A., 1953 Compilation (P.S.), as follows:

"B. For the purposes of subsection A of this section and sections 64-13-59 and 64-22-2 New Mexico Statutes Annotated, 1953 Compilation, 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. For the purposes of any other provision of the Motor Vehicle Code, the terms "conviction" and "convicted" mean a final conviction in the trial court. For the purposes of the Motor Vehicle Code, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, when unvacated, is equivalent to a conviction."

The preceding sections provide for the mandatory revocation of a person's operator's license upon a "conviction". Section 40A-29-15, *supra*, deals only with deferring sentencing or wholly or partially suspending a convicted defendant's sentence. Section 40A-29-15, *supra*, therefore, does not give power to any court to change any conviction, and it cannot be utilized to prevent the revocation of a person's operator's license under Section 64-13-59, *supra*.

There does not appear to be any authorization in the statutes for a municipal court to change a conviction. If a court rightly has jurisdiction of a matter, it has jurisdiction to decide the case wrongly as well as jurisdiction to decide it properly, **People v. McAllister**, 15 Cal. 2d 519, 102 P. 2d 1072. If a conviction was not proper, the remedy lies in appeal. **People v. McAllister**, *supra*. Section 38-1-1, {372} N.M.S.A., 1953 Compilation, authorizes appeals to the district court from decisions of the municipal court.

Therefore, we conclude that when a municipal court has entered a conviction of operating a motor vehicle while intoxicated that court has no authority under Section 40A-29-15, or any other section of our statutes to change that conviction.

However, please note that Section 64-22-2(E), N.M.S.A., 1953 Compilation (P.S.), Laws 1965, Chapter 251, would permit a person convicted of driving while intoxicated on or after June 18, 1965, to apply to the district court for a limited driving privilege under certain conditions.