

Opinion No. 67-142

December 4, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Robert R. Salazar, Commissioner Department of Motor Vehicles State Capitol
Santa Fe, New Mexico

QUESTION

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Are the district judges when acting under Section 64-22-2 (E), N.M.S.A., 1953 Compilation (P.S.) bound by the five year and lifetime limitations spelled out in Section 64-13-40(E), N.M.S.A., 1953 Compilation (P.S.).

CONCLUSION

Yes.

OPINION

{*228} **ANALYSIS**

Your question concerns the extent of authority granted to district judges in ordering issuance of limited licenses to those convicted of driving a vehicle while under the influence of intoxicating liquor. Section 64-22-2, N.M.S.A., 1953 Compilation makes punishable the offense of driving while intoxicated and upon conviction directs the commissioner of motor vehicles to revoke the offender's license or permit except as otherwise provided.

Subsection E (Section 64-22-2, supra) otherwise provides as follows:

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 limitation 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.

Since Subsection E, supra allows the court to order the issuance of a limited license for good cause shown regardless of the number of times a person is convicted under the section (Section 64-22-2, supra), there is an apparent conflict with Section 64-13-40, N.M.S.A., 1953 Compilation as you indicate in your question. Section 64-13-40, supra

specifies those persons not to be licensed by the Department of Motor Vehicles. Subsection E therein prohibits the licensing of anyone who has been convicted three times any-where in the United States for driving while under the influence of intoxicants. It further provides that five years following the third conviction such a person may apply to the district court for restoration of his driving privileges. Upon good cause shown the court may so order. A subsequent conviction deprives a person of his driving privileges forever.

It is obvious then that the conflict arises by prohibiting the Department from issuing licenses to drivers who have been convicted three times for driving while intoxicated and not so restricting the district courts by allowing the district courts to order the issuance of limited licenses regardless of the number of convictions. In attempting to resolve this inconsistency we must rely upon rules of statutory construction. The applicable rule here is that where a statute deals with a subject in general terms (Section 64-22-2(E), *supra*) and another deals with a part of the same subject in a more definite way (Section 64-13-40(E), *supra*) the special statute governs.

We find that Subsection E of Section 64-22-2, *supra* gives general authority to the courts to allow issuance of limited licenses whereas Subsection E of Section 64-13-40, *supra*, more specifically enumerates when a driver who is convicted for driving while intoxicated is to be denied his privileges. Therefore, we conclude that upon a third conviction for driving under the influence of intoxicating liquors the offender is deprived of his privilege to operate a motor vehicle for at least five years.

By: David R. Sierra

Assistant Attorney General