

Opinion No. 69-31

April 16, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Vince D'Angelo, Assistant Attorney General

TO: Mr. Lawrence H. Prentice, Commissioner, Department of Motor Vehicles, Santa Fe, New Mexico

QUESTIONS

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May a district court under the authority granted to it by Section 64-22-2 E, N.M.S.A., 1953 Compilation, grant a limited driver's license to a person denied a license in accordance with the provisions of Section 64-13-40 C, D or E, N.M.S.A., 1953 Compilation?

CONCLUSION

No.

OPINION

{*44} ANALYSIS

Section 64-22-2, N.M.S.A., 1953 Compilation, in its pertinent part provides:

{*45} 64-22-2. Persons under the influence of intoxicating liquor or of drugs. -- A. It is unlawful and punishable as provided in subsection C of this section for any person who is under the influence of intoxicating liquor to drive or be in actual physical control of any vehicle within this state.

B. It is unlawful and punishable as provided in subsection C of this section for any person who is an habitual user of, or under the influence of, any other drug, to a degree which renders him incapable of safely driving a vehicle, to drive a vehicle within this state. The fact that any person charged with a violation of this subsection is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this subsection.

...

D. The commissioner shall revoke the license or permit to drive, and any nonresident operating privilege of any person convicted under this section, except as otherwise provided herein.

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.

This portion of the Motor Vehicle Code is concerned with crimes, penalties, and procedure.

Section 64-13-40, N.M.S.A., 1953 Compilation, in its pertinent part provides:

64-13-40. Persons not to be licensed. -- The department shall not issue any license under the Motor Vehicle Code to any person:

...

C. As an operator or chauffeur, whose license has been suspended, during the suspension, or to any person whose license has been revoked, except as provided in section 64-13-62 New Mexico Statutes Annotated, 1953 Compilation;

D. As an operator or chauffeur, who is an habitual drunkard, an habitual user of narcotic drugs or an habitual user of any drug to a degree which renders him incapable of safely driving a motor vehicle;

E. As an operator or chauffeur, who, subsequent to July 1, 1955, is three [3] times convicted of driving a motor vehicle under the influence of intoxicating liquor or narcotic drug, regardless of whether the convictions are under the laws or ordinances of this state or any municipality or county thereof, or under the laws or ordinances of any other state, the District of Columbia, or any governmental subdivision thereof. Five [5] years after being so convicted for the third time, the person may apply to any district court of this state for restoration of an operator's or chauffeur's license and the court, upon good cause being shown, may order restoration of the license applied for. Upon issuance of the order of restoration, a certified copy shall immediately be forwarded to the department, and if the person is otherwise {~~46~~} qualified for the license applied for, the three [3] previous convictions shall not prohibit issuance of the license applied for. Should the person be subsequently once convicted of either of the same offenses, he shall thereafter never be granted any license to drive any motor vehicle upon highways of this state;

...

This act is concerned with persons who do not have a valid operator's or chauffeur's license: It defines those persons to whom such a license may not be issued.

That portion of 64-22-2 E which provides, "The district court may . . . in lieu of revocation, limit the license . . . **of any person convicted under this section.** . . ." (emphasis supplied) clearly limits its application to persons convicted under Sections 64-22-2 A and B of the Motor Vehicle Code. Moreover, since the statute provides that the district court may limit a license only "in lieu of revocation", it logically follows that this provision may be applied only where the person convicted has a valid operator's or chauffeur's license. Consequently, we are of the opinion that subsection E of Section 64-22-2 of the Motor Vehicle Code can have no application to Section 64-13-40 since the latter act concerns persons who do not possess and may not obtain a valid driver's license.