

Opinion No. 80-21

May 29, 1980

OPINION OF: Jeff Bingaman, Attorney General

BY: Herbert M. Silverberg, Assistant Attorney General

TO: The Honorable Robert M. Doughty, Jr., District Judge, Twelfth Judicial District, P.O. Box 2004, Alamogordo, New Mexico 88310

MOTOR VEHICLES

An applicant for a limited driving permit who has obtained judicial approval and financial responsibility endorsement, may not lawfully drive before the limited permit is actually issued by the Director of the Motor Vehicle Division of the New Mexico Transportation Department.

QUESTIONS

May an applicant for a limited driving permit under Section 66-5-35 NMSA 1978, who has obtained the required judicial approval and financial responsibility endorsement, lawfully drive before the limited permit is actually issued by the Director of the Motor Vehicle Division of the New Mexico Transportation Department?

CONCLUSIONS

No.

ANALYSIS

Section 66-5-2 A(1) NMSA provides that "no person shall drive any motor vehicle upon a highway in this state unless he **holds a valid license**.. ." (Emphasis added.) Section 66-5-16 NMSA 1978 requires that when operating a motor vehicle each licensee shall have in his or her immediate possession his or her driver's **license**.

OPINION

Neither of these statutes, nor any other of which we are aware, permits a person to operate a motor vehicle on the basis of documents in his or her possession which could, upon performance of a ministerial function by a government official, lead to the issuance of a license. Such a system would, of course, obviate the need for driver's licenses themselves, replacing them with the mere requirement that there be documents establishing an inchoate right to obtain a license. The next logical step would be a system of entitlement to drive, without testing or documentation, for all those who **could**

have met the licensing requirements if they had taken the trouble to go through the required steps.

Even Section 65-5-16 NMSA 1978, which immunizes from conviction for non-possession a driver who is found driving without a license in his or her immediate possession, immunizes only a driver who can produce in court "a driver's **license theretofore** issued . . . **and valid at the time.** . . ." (Emphasis added.) It would not be a valid defense to a non-possession charge merely to be in possession of a completed license application, certificate of having passed the driving test, or any lesser documentation than a license itself.

{*153} Nothing in Section 66-5-35 NMSA 1978 leads to, or even suggests, a different result. It is axiomatic, of course, that unambiguous statutes are to be given effect as written, **State v. Elliott**, 89 N.M. 756, 557 P.2d 1105 (1977); and that the legislative intent is derived primarily from the language of the act, **Winston v. New Mexico State Police Bd.**, 80 N.M. 310, 454 P.2d 967 (1969). And in view of the fact that the entire system of enforcement of our driving laws is substantially based upon the ability to verify promptly and accurately who has been licensed to drive and who has not, no other result would properly reflect the appropriate public policy.

An officer at a roadblock or in some other law enforcement situation should not be forced to pursue, and evaluate the legal significance of, a set of application papers in light of the corresponding motor vehicle statute and/or regulation, in an effort to assess the legitimacy of someone's claim to the right to drive.

Until a license is issued to an applicant, he or she may not lawfully drive a motor vehicle on state highways. This result does not change simply because he or she possesses a set of forms which would lead to issuance of a driver's license if both the applicant and a government official took further steps with regard to them.

ATTORNEY GENERAL

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