

Opinion No. 38-1875

February 7, 1938

BY: FRANK H. PATTON, Attorney General,

TO: New Mexico State Police Santa Fe, New Mexico. Attention: Mr. A. B. Martinez
Sergeant

{*210} This is to acknowledge receipt of your letter of January 31, 1938. You request an opinion upon the following state of facts: During the month of December, 1937, an applicant for a driver's license was convicted of operating a motor vehicle while under the influence of intoxicating liquor and was sentenced to serve sixty days in jail, which sentence was suspended. You wish to know if you may lawfully issue a license to this party.

Your attention is directed to Section 5, Chapter 110, New Mexico Session Laws of 1937, which contains the prohibitions against issuing licenses. Briefly, by this section you are prohibited from issuing licenses to the following: (1) Minors under the age of 14 years, and chauffer's license to persons under the age of 18 years, unless by order of the court; (2) To any person whose license has been suspended during the period of suspension, nor to any person whose license is revoked under the provisions of Chapter 110, Laws of 1937; (3) To an habitual drunkard or a person addicted to the use of narcotic drugs; (4) To idiots, imbeciles, etc.; (5) To such persons as the department shall have good reason to believe are unable to safely operate a motor vehicle because of physical or mental disability; (6) **To any person who has within a period of 12 months been convicted as many as four times for reckless driving under the Laws of the State of New Mexico or any ordinance pertaining to reckless driving;** (7) **To any person twice convicted of a felony where a motor vehicle was involved.**

I do not believe that the applicant comes within any of the provisions of the above act. Had he been four times convicted of reckless driving or drunken driving, you could not issue him a permit. However, according to the facts submitted by you, he was only convicted one time. Also it does not appear that the applicant was convicted as many as two times for felonies where a motor vehicle was used.

Section 17 of the act refers to mandatory revocation of licenses. You are required to revoke a license where any person drives a motor vehicle while under the influence of intoxicating liquor. However, this section merely refers to revocation after licenses have been issued and not to matters pending or decided before the act went into effect.

Trusting that this answers your question, I am

By: RICHARD E. MANSON,

Asst. Atty. Gen.