

Opinion No. 39-3312

October 20, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Chief Tom Summers, New Mexico State Police, Santa Fe, New Mexico. Attention: W. A. Ehret, Captain N.M. State Police, Albuquerque, New Mexico.

{*117} Your letter of October 16th makes inquiry relative to a person charged with accompanying an intoxicated person operating a motor vehicle. Section 26, Chapter 150 of the Laws of 1919 (Section 11-226, N.M. Statutes, Annotated, 1929 Compilation) reads as follows:

"Any person who shall, while in an intoxicated condition, operate or attempt to operate a motor vehicle upon any public highway or within any incorporated {*118} city, town or village within this state, shall, upon conviction, be subject to imprisonment for a period of not less than thirty days or more than one year and a fine of not less than one hundred dollars nor more than one thousand dollars. Any person who knowingly and wilfully accompanies an intoxicated person who is operating a motor vehicle shall, upon conviction, be subject to the same penalties as provided for the punishment of the drivers thereof."

Section 2, Chapter 75 of the Session Laws of 1929, which is Section 11-802, New Mexico Statutes, Annotated, 1929 Compilation, reads as follows:

"It shall be unlawful and punishable as provided in Section 60, (Chapter 75, Laws of 1929) (11-860, 1929 Code) of this act for any person whether licensed or not who is a habitual user of narcotic drugs or any person who is under the influence of intoxicating liquors or narcotic drugs to drive any vehicle upon the highway within this state."

Section 60, Chapter 75, Laws of 1929, reads as follows:

"Every person who is convicted of a violation of Section 2 of this act relating to habitual users of narcotic drugs and driving while under the influence of intoxicating liquor or narcotic drugs shall be punished by imprisonment in the county or municipal jail for not less than thirty days nor more than one year or by a fine of not less than one hundred dollars nor more than one thousand dollars or by both such fine and imprisonment. On a second or subsequent conviction he shall be punished by imprisonment for not less than ninety days nor more than one year, and, in the discretion of the court, a fine of not more than one thousand dollars."

Under Title VII of Chapter 75 of the Session Laws of 1929, we find the following, which reads as follows:

"The existing statutes covering the same matters as embraced in this act are hereby repealed and all acts or parts of acts inconsistent with the provisions of this act are hereby repealed."

There is no question in my mind that the first paragraph of Section 26 of Chapter 150 of the Session Laws of 1919, and which relates to operating motor vehicles while in an intoxicated condition, was superseded by Section 2, Chapter 75 of the Laws of 1929, due to the fact that the same matters are embraced in the later act and thus inconsistent with the provisions of same, said act having a penalty provision of its own.

It being that the second paragraph of Section 26 of Chapter 150 of the Laws of 1919 is so interwoven with the first part and referring directly to the first part and its penalty, thus not being a separate part of the section in itself, once the first part of said section, and especially the part that mentions the penalty clause and which applies to the second paragraph of said section, having been superseded by Section 2, Chapter 75 of the Laws of 1929, and its penalty clause, it is therefore my opinion that the whole of said section (11-226) was repealed.

Being that this office holds that since there is no statute making it unlawful for a person to accompany an intoxicated person who is operating a motor vehicle, this office withdraws Opinion No. 2003 relating to revocation of driver's license of persons accompanying a drunken driver.