

Opinion No. 59-48

May 6, 1959

BY: FRANK B. ZINN, Attorney General

TO: Mr. Emilio Naranjo Administrator Driver Services Department Santa Fe, New Mexico

Licensed nonresident drivers are not required to apply for New Mexico operator's license.

Persons possessing valid nonresident operator's licenses or permits are not required to surrender them upon making application for New Mexico license.

OPINION

{*74} This is written in reply to your recent request for an opinion on the following questions:

Is an out-of-state driver or nonresident licensee who remains and even works in this state for a period of time required to apply for a New Mexico operator's license?

Is an out-of-state driver or nonresident licensee required to surrender a valid and current operator's license upon making application for an operator's license in this state?

It is my opinion that a nonresident driver who holds a valid and current operator's license issued by another state is not required to apply for a New Mexico license even though such person may remain and even work in this state for a period of time.

It is my further opinion that a nonresident operator licensee is not required to surrender a valid and current out-of-state license upon making application for a New Mexico license.

A review of the statutory provisions pertinent to your first question, Section 64-13-38 and Section 64-13-39, N.M.S.A., 1953 Compilation (p.s.) indicate that all persons driving motor vehicles upon highways in this state shall be licensed as operators or chauffeurs, except persons over eighteen (18) years of age who are residents of states not requiring driver's licenses. It is specifically provided, however, in Section 64-13-39, N.M.S.A., 1953 Compilation (p.s.) that

"The following persons are exempt from license hereunder:

.....

2. A nonresident who is at least sixteen (16) years of age and who has in his immediate possession a valid operator's license issued to him in his home state or country may operate a motor vehicle in this state only as an operator; . . ."

For the sake of clearing up an area of misunderstanding I believe it should be pointed out that prior to 1955, by Section 64-13-4, N.M.S.A., 1953 Compilation, nonresident licensed drivers were allowed to operate motor vehicles on New Mexico highways no longer than ninety (90) days, with an exception for military personnel, before being required to apply for a New Mexico license. This provision, however, is no longer a part of our law, having been repealed by Section 704, Laws of 1955.

A further search of the statutes fails to disclose that the status of residence is a requisite qualification permitting application for a New Mexico operator's license. It must be concluded that any person without regard to residence who is otherwise qualified may apply for and must be issued a driver's license in this state. Section 64-13-48, N.M.S.A., 1953 Compilation (p.s.)

The remaining consideration is whether a person who comes into the state as a visitor for an extended period or is employed here thereby loses his status as a nonresident, Section 64-13-34, N.M.S.A., 1953 Compilation (p.s.), and is no longer afforded the exemption permitted under Section 64-13-39. **In State ex rel Magee v. Williams**, 57 N.M. 588, 261 P. 2d 131 our Supreme Court held that residence is determined by finding the fact of abode and an intent to remain. See also **Allen v. Allen**, 52 N.M. 174, 194 P. 2d 270. It follows, where there is no manifestation or other evidence of an intent to remain in New Mexico, then residence is not established, or as is of importance to this opinion, there is no abandonment of an existing nonresident status.

It must be concluded that a nonresident driver may operate motor vehicles for an indefinite period upon New Mexico highways, the privilege of being limited only by the period covered by the valid out-of-state license. Attorney General Opinion No. 5089, dated October 21, 1947.

As to your second question I find that the surrender of a license is required only in keeping with the following: Section 64-13-63, N.M.S.A., 1953 Compilation (p.s.) requires that:

"The division upon suspending or revoking a license shall require that such license shall be surrendered to and be retained by the division, except that at the end of the period of suspension such license so surrendered shall be returned to the licensee."

The grounds for suspending or revoking a license are set out in Sections 64-13-59 and 64-13-60, N.M.S.A., 1953 Compilation (p.s.). And Section 64-13-56, (a) N.M.S.A., 1953 Compilation, (p.s.) specifically provides that:

"(a) The privilege of driving a motor vehicle on the highways of this state given to a nonresident hereunder shall be subject to suspension or revocation by the division in

like manner and for like cause as an operator's or chauffeur's license issued hereunder may be suspended or revoked."

An examination of the statutes (§§ 64-13-39, 64-13-40, N.M.S.A., 1953 Compilation (p.s.) sets out the requisites for issuing an operator's license.

Section 64-13-48, N.M.S.A., 1953 Compilation (p.s.) provides that:

"(a) The division shall upon payment of the required fee issue to every applicant qualifying therefor an operator's or chauffeur's license as applied for, . . ."

No provision can be found in the entire "Uniform Motor Vehicle Operators' and Chauffeur's License Act" which requires the surrender of a valid nonresident operator's license upon making application for a license issued in this state. I must conclude that a demand for surrender of an out-of-state license possessed by an applicant should not, under the law, be made.

Hilton A. Dickson, Jr.

Assistant Attorney General