

## Opinion No. 60-129

July 1, 1960

**BY:** OPINION of HILTON A. DICKSON, JR., Attorney General

**TO:** Hon. Oscar Beasley State Representative Bernalillo County 2314 Kimo Dr., N.E.  
Albuquerque, New Mexico

### QUESTION

#### QUESTION

Does the Motor Vehicle Division have the right to require a physical surrender of a driver's license of a motorist as a condition precedent to the hearing on the suspension provided by § 64-13-60, N.M.S.A., 1953 Compilation (P.S.)?

#### CONCLUSION

No.

### OPINION

#### {\*505} ANALYSIS

§ 64-13-60, N.M.S.A., 1953 Compilation (P.S.), being a compilation {\*506} of Chapter 179, § 306, Laws of 1955, a part of the Uniform Motor Vehicle Operators' and Chauffeurs' License Act, provides as follows:

**"Authority of division to suspend or revoke license.** -- (a) The division is hereby authorized to suspend the license of an operator or chauffeur without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

1. Has committed an offense for which mandatory revocation of license is required upon conviction;
2. Has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage;
3. Has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;
4. Is an habitually reckless or negligent driver of a motor vehicle;
5. Is incompetent to drive a motor vehicle;

6. Has permitted an unlawful or fraudulent use of such license; or

7. Has committed an offense in another state which if committed in this state would be grounds for suspension or revocation.

(b) Upon suspending the license of any person as hereinbefore in this section authorized, the division shall immediately notify the licensee in writing and **upon his request shall afford him an opportunity for a hearing as early as practical within not to exceed twenty (20) days after receipt of such request** in the county wherein the licensee resides unless the division and the licensee agree that such hearing may be held in some other county. Upon such hearing the commissioner or his duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the division shall either rescind its order of suspension or, good cause appearing therefor, may continue, modify or extend the suspension of such license or revoke such license." (Emphasis supplied).

Thus, the Motor Vehicle Division has the power to order a license suspension without preliminary hearing for any of the grounds elucidated in the section. However, it must grant a hearing on the suspension within a period not to exceed 20 days from the date of receipt of his request after the order of suspension. We have held in Opinion No. 59-6, dated February 2, 1959 that the hearing must be held within the statutory period or the suspension becomes invalid.

You state that the Motor Vehicle Division has taken the position that the hearing provided by § 64-13-60 will not be held until there has been a physical surrender of the license by the affected motorist. The Division bases its position upon § 64-13-63, which reads as follows:

**"Surrender and return of license.** -- 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."

{\*507} § 64-13-63 does clearly give the Division the right to require a license surrender to the Division upon entering the order of suspension. However, this section does not give the Division the authority to require such a surrender as a condition precedent to holding the hearing required by § 64-13-60. As was said in Opinion No. 59-6, supra, if the Motor Vehicle Division enters an order of suspension and a hearing is requested, the hearing must be held within 20 days after receipt of the request. Nowhere is there any authorization to delay the hearing pending the physical receipt of the suspended license. Therefore, we conclude that the Division has the power to require surrender of the license to the Division upon entering an order of license suspension, but cannot delay the setting of a hearing pursuant to § 64-13-60 because of a failure on the part of the driver to physically surrender his license.

By: Philip R. Ashby

Assistant Attorney General