

Opinion No. 60-194

October 14, 1960

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

TO: Mr. Emilio Naranjo Administrator Drivers Services Division P.O. Drawer D Santa Fe, New Mexico

QUESTION

QUESTIONS

1. May the Department of Motor Vehicles, acting through the Driver Services Division, suspend a restricted license for violation of the restrictions therein, if the only evidence of those violations is the notarized statement of a state police officer?
2. May the Department of Motor Vehicles, acting through the Driver Services Division, take any action against the driving privileges of the holder of an unrestricted operator's license on the basis of a report by a state police officer that the licensee has violated the law, and, in so doing, has been involved as a driver in an accident resulting in serious property damage?

CONCLUSIONS

1. Yes.
2. No.

OPINION

{*597} ANALYSIS

Firstly, N.M.S.A., 1953 Compilation, § 64-13-36, grants authority to the Department of Motor Vehicles to act through its agents and employees. Your office, as agent of the department, can perform all acts delegated to you, if those same acts are within the power of the Department of Motor Vehicles.

Turning to your first question, we understand from your request that John Doe was convicted in a Justice of the Peace Court of driving while intoxicated. He appealed that conviction to the District Court, but, pursuant to a hearing, your office suspended his operator's license and issued in its stead a restricted license. The restriction provided that the licensee should not operate his motor vehicle at night, and you have received the notarized statement of a state police officer that that restriction has been violated. You now ask whether, on the basis of the notarized statement, the restricted license may be suspended. We are of the opinion that it can be either suspended or revoked.

§ 64-13-60, N.M.S.A., 1953 Compilation grants to your office the power to suspend the license of an operator without preliminary hearing upon sufficient evidence that the licensee has committed an offense for which mandatory revocation of license is required upon conviction. § 64-13-17, N.M.S.A., 1953 Compilation requires the revocation of the license of one convicted of driving while intoxicated. The record of conviction of this offense in the Justice of the Peace Court was sufficient evidence of the offense, and your office could properly suspend his license, as you did.

{*598} Your office, under § 64-13-50, N.M.S.A., 1953 Compilation having suspended the license, had authority to issue a restricted license in its stead, imposing on the licensee such restrictions as you determined to be necessary to assure the safe operation of a motor vehicle. Subsection (c) of § 64-13-50, supra, authorizes your office to suspend or revoke such a restricted license upon receiving "satisfactory evidence" of a violation of a restriction imposed upon the licensee, subject to the right of the licensee to a hearing on the suspension or revocation. Hence, your office may suspend or revoke the license in question if the notarized statement of a police officer amounts to "satisfactory evidence" of a violation, as required by the statute.

It is not possible for this office to give any precise definition of "satisfactory evidence." We will say that it should be of such a nature that a reasonably prudent man would be satisfied as to its truth and accuracy. Certainly a court record of conviction is not required, for many restrictions placed on licenses are not such that their violation would be a crime cognizable by any court, and no court record of conviction would ever be possible. In many, perhaps most, cases the best and only evidence available would be the statement of a police officer. We feel that such a statement is satisfactory evidence of a violation, whether notarized or not. For your own protection, you probably should require that such a statement be made in writing and signed by the police officer making the statement.

Your second question poses graver problems. Your office has the report of a police officer that an Indian driver violated the law, and, in so doing, became involved as a driver in an accident involving serious property damage. To date, the driver has not been convicted of any violation of law by any court. He is also the holder of an unrestricted driver's license. Your question is whether your office may take any action against his driving privileges. We think not.

§ 64-13-60, N.M.S.A., 1953 Compilation, in subsection (a) (2), grants to your office the power to **suspend** the license of an operator without preliminary hearing upon a showing by "sufficient evidence" that the licensee has been involved as a driver in an accident resulting in the death or personal injury of another or serious property damage. In line with our reasoning under your first question, we hold at the outset that the report of the police officer is "sufficient evidence" of such an accident and of the serious property damage involved. Having so held, it would seem to follow that the license of such an operator could be suspended by virtue of the power granted in the cited section. But we note at this point that the section cited does not require that the driver involved in the accident be at fault; it merely requires that he be involved as a driver.

This section represents a departure from the wording of the original act, known as the Uniform Motor Vehicle Operators' and Chaffeurs' License Act, compiled in Uniform Laws Annotated, Volume 11. § 19 (2) of the Act as follows:

That such person has, **by reckless or unlawful operation of a motor vehicle, caused or contributed to** an accident resulting in death or injury to any other person, or serious property damage.

The State of Idaho made the same departure from this section as did New Mexico, and their statute reads identically with ours. See Sec. 49-330, Idaho Code, 1947. The constitutionality of that statute was in issue in **State v. Kouni**, 58 Id. 493, 76 P. 2d 917 (1938). The case is especially applicable because it involved the suspension of the license of a driver who was at fault in an accident resulting in the death of a human being. The court ruled, nonetheless, that the statute was unconstitutional for failure to require a showing of {599} fault, and that the suspension under the statute deprived the licensee of the use of his property without due process of law.

The Constitution of New Mexico, Art. II, § 18, provides:

"Right to life, liberty, property. No person shall be deprived of life, liberty, or property without due process of law; nor shall any person be denied the equal protection of the laws.

Following the authority of **State v. Kouni**, supra, we are of the opinion that the failure to require fault renders the subject section unconstitutional as an attempted grant of power to deprive a licensee of property without due process of law.

We feel that there is a second ground of objection to our statute. The quoted constitutional provision relating to equal protection of the laws is unqualified; no person may be denied the equal protection of the laws, whether through due process of law or not.

The necessities of a developing society have caused this constitutional provision to be circumscribed in some cases. Thus, it is recognized that some special groups require special treatment, and, where there is a good reason to treat a particular group specially, there can be no complaint of a denial of the equal protection of the laws if all members of that group are treated equally. **State v. Thompson**, 57 N.M. 459, 260 P. 2d 370 (1953). This doctrine is itself limited in that there must be some reasonable basis for isolating a particular group, or treating that group specially. **State v. Thompson**, supra; **State v. Sunset Ditch Co.**, 48 N.M. 17, 145 P. 2d 219 (1944). Murderers are incarcerated for the public safety. Minors may not contract for the good reason that they have not sufficient experience to do so wisely. Our statutes, § 64-13-60 (a) (2), N.M.S.A., 1953 Compilation, attempt to treat specially a driver who has been involved in an accident resulting in serious property damage, whether he was at fault or not, and despite the fact that he is otherwise qualified to hold a license. An endless number of examples might be cited to show that a driver involved in an accident is not at fault in

any way, and is just as well qualified to hold his license as any other driver. We are of the opinion that, to deprive a qualified driver of his license on the basis that he has been involved in an accident, without more, is to deny him the equal protection of the laws, because there exists no reasonable basis for placing him in a special category.

While this office approaches the question of the constitutionality of a duly enacted statute with great caution, we feel that it is our duty to advise you that § 64-13-60 (a) (2), N.M.S.A., 1953 Compilation, is unconstitutional for failure to require sufficient evidence of fault on the part of a driver involved in an accident resulting in the death or personal injury of another or serious property damage, in that the failure to include such a requirement renders the statute an attempt to grant the Department of Motor Vehicles the power to deprive licensees of property without due process of law, and denies to licensees the equal protection of the laws, contrary to the Constitution of New Mexico, Art. II, § 18.

Having held the cited section unconstitutional, no statute exists to give your office the power to suspend, revoke or alter in any way the license that is the subject of your second question, and we answer that question in the negative.

By: Norman S. Thayer

Assistant Attorney General