

## Opinion No. 60-49

March 16, 1960

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

**TO:** Senator Fabian Chavez, Jr. Chairman /- State Judicial System Study Committee P. O. Box 1651 Santa Fe, New. Mexico

### QUESTION

#### QUESTIONS

1. At what point in court proceedings is a defendant "convicted" within the meaning of § 64-15-58, N.M.S.A., 1953 Comp. P.S., so that the court must require surrender of operator's and chauffeur's licenses to be forwarded with a record of such conviction to the Division of Motor Vehicles for mandatory revocation under § 64-13-59?
2. In a district court, if the imposition of the judgment and sentence of the court is deferred under the provisions of § 40-1-11, N.M.S.A., 1953 Comp. P.S., is the finality of the conviction thus suspended within the meaning of § 64-13-58 and 64-13-59?

#### CONCLUSIONS

1. A person is convicted when his guilt has been determined either by a plea or by a verdict.
2. No.

### OPINION

#### {\*403} ANALYSIS

The problem involved is whether or not the use of the word "convicted" in § 64-13-58, N.M.S.A., 1953 Comp. P.S., is to be given its ordinary legal meaning or construed {\*404} in strict and narrow legal sense.

"In criminal procedure the word is of equivocal meaning, and because of the varied senses in which it is used, it is difficult of definite signification; it may, however, for the purpose of classification be said to have three meanings: (1) General; (2) ordinary; and (3) technical. In its general or comprehensive sense, the term has been defined as the overthrow of the defendant by the establishment of his guilt, implying that one has been found guilty of some criminal offense; \* \* \* the act of proving guilt of an offense charged against a party by a legal tribunal. \* \* \*" Citing 13 CJ, 905.

On page 906, 13 CJ, the word is defined in its ordinary legal meaning as:

"\* \* \* the confession of the accused in open court; \* \* \* even where there has been no judgment; \* \* \* that particular stage of a criminal prosecution when a plea of guilty is entered in open court; that particular stage of a criminal prosecution when a verdict of guilty is determined by a jury; \* \* \* a finding of guilty of a criminal offense; \* \* \*. It has been said that, while the word may be used as signifying the sentence pronounced on the verdict, or the record of conviction, including inter alia the verdict and sentence, still such meaning ought not to be attributed to it, unless there is something in the context to indicate that it was used in such sense, and that 'sentence' is the appropriate word to denote the action of the court before which the trial is had, declaring the consequences to the convict of the fact thus ascertained."

**ALSO:**

"A conviction, in ordinary legal language, consists of a plea of verdict of guilty, and it is immaterial whether or not final judgment has been rendered thereon." **Ex parte Brown**, 68 Cal. 176, 8 P. 829.

"Sentence is a distinct thing from the conviction wherein it is found." *Woodward v. Bridges*, 144 Fed. 156.

"It is settled that the sentence is no part of the conviction. \* \* \* When no issue either of law or fact remains to be determined, and there is nothing to be done except to pass sentence, the respondent has been convicted; and the record of that conviction or the docket entry where no extended record has been made, are admissible against him to prove such conviction." **State v. Knowles**, 98 Me. 429, 57 Atl. 588.

There is nothing in § 64-13-58 or in any of its accompanying sections to suggest that the words "convicted" or "conviction" are used by the legislature in other than their usual and ordinary legal meaning. Therefore, it is the opinion of this office that a party is convicted under that section when his guilt is established by either a plea or a verdict and it is immaterial whether a sentence necessarily or always follows it.

Question two is partially answered by the analysis under question one. However, it should be pointed out that the authority of the district court to suspend the imposition or execution of sentence rests upon the **entry of a judgment\_\_ of\_\_ conviction**. Since the judgment of conviction must be entered by the district court, and in view of our holding under question one above, the conviction is not affected by the district court's suspending the imposition or execution of a sentence. Upon conviction of a crime not punishable by death or life imprisonment, the district court may, in its discretion, suspend the fine or imprisonment in whole or in part, {\*405} and this authority represents the progressive attitude of modern-day lawmakers in permitting the courts to use every means to effect rehabilitation. The legislature, however, has made plain the fact that it does not wish a person who has been convicted of driving while intoxicated to be permitted a driver's license for one year following his conviction regardless of the punishment handed out or withheld by the court. There is no discretion as to the revocation of the driver's license vested in the Motor Vehicle Division. It must revoke the

license for a minimum of one year upon being informed that the driver has been convicted of driving while intoxicated. It might be noted also that the authority of the Division to suspend or revoke a license does not necessarily depend upon a person having been convicted of an offense, but may be revoked or suspended under § 64-13-60 for a number of reasons not involving the commission of a crime. The license to drive is a privilege and driving a vehicle while intoxicated is not only an abuse of the privilege but constitutes a crime in addition. The court has every authority, under § 40-1-11, to suspend the punishment for the commission of the crime but the mandatory authority to revoke the license privilege for an abuse of that privilege is vested in the Commissioner and in him alone. The district court has no authority to revoke a license for conviction of driving while intoxicated. **City of Roswell v. Ferguson**, 66 N.M. 152,343 P. 2d 1040; **City of Roswell v. Raymond New**, 1960 Vol. II, (Advance) No. 6522. The court should obtain the license and forward it to the commissioner with the judgment of conviction entered under § 40-1-11, above.

By: B. J. Baggett

Assistant Attorney General