

Opinion No. 64-145

December 9, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Mr. Benny E. Sanchez, Commissioner, Department of Motor Vehicles, Santa Fe, New Mexico

QUESTION

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Is a person who possesses a valid non-resident operator's or chauffeur's license required to surrender it upon making an application for an operator's or chauffeur's license in this state?

CONCLUSION

Yes.

OPINION

ANALYSIS

Prior to 1963, Section 64-13-38, N.M.S.A., 1953 Compilation did not require an applicant for a driver's license to surrender an operator's license issued to him by this state or any other state. (See Attorney General Opinion No. 59-48). However, the 1963 regular session of the legislature amended Section 64-13-38, supra, by expressly providing for the surrender of an operator's or chauffeur's license issued to an applicant by this or any other state. Section 64-13-38, subsections (1) and (2) now read as follows:

"(1) No person shall drive any motor vehicle upon a highway in this state unless he has a valid license as an operator or chauffeur under the provisions of the Motor Vehicle Code. No person shall receive an operator's license **until he surrenders to the division any operator's and chauffeur's license issued to him by this state or any other state** or files an affidavit with the division that he does not possess an operator's or chauffeur's license; and

(2) No person shall drive a motor vehicle upon a highway in this state as a chauffeur unless he holds a valid chauffeur's license **until he surrenders to the division any operator's and chauffeur's license issued to him by this state or any other state** or files an affidavit with the division that he does not possess an operator's or chauffeur's license."

It must be concluded from a reading of Section 64-13-38, supra, as amended, that a person possessing a valid non-resident operator's or chauffeur's license must surrender it upon applying for a New Mexico operator's or chauffeur's license, or file an affidavit with the Department of Motor Vehicles that he does not possess an operator's or chauffeur's license. Furthermore, the Drivers License Compact, Article V, Section 74-13-79 (c) provides that "the licensing authority in the state where application is made shall not issue a license to drive to the applicant if the applicant is the holder of a license to drive issued by another party state and currently in force, **unless he surrenders the license.**" (Emphasis added).