

## Opinion No. 67-51

March 30, 1967

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Mr. Robert R. Salazar Commissioner Department of Motor Vehicles State Capitol Building Santa Fe, New Mexico

### QUESTION

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Do Sections 64-22-2 (D), 64-13-57 and 64-13-59, N.M.S.A., 1953 Compilation make it **mandatory** that the Department of Motor Vehicles revoke the driver's license of a person who has been convicted of driving while intoxicated in another state?

#### CONCLUSION

No, it is discretionary with the Department of Motor Vehicles.

### OPINION

#### {\*71} ANALYSIS

As amended in 1965, Section 64-22-2(D), N.M.S.A., 1953 Compilation (P.S.) provides as follows:

"The commissioner shall revoke the license or permit to drive, and any nonresident operating privilege of any person **convicted under this section**, except as otherwise provided herein." (Emphasis {\*72} added).

When this legislative enactment speaks in terms of "convicted under this section," it must necessarily mean a New Mexico conviction.

Section 64-13-59, N.M.S.A., 1953 Compilation provides that the division [Department] "shall forthwith revoke the license of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction of any of the following offenses, whether such offense he had under any **state law or local ordinance**, when such conviction has become final . . . (2) Driving a motor vehicle while under the influence of intoxicating liquor . . ."

Again this particular statute certainly appears to refer to a New Mexico conviction.

The crucial provision, in our opinion, is Section 64-13-57, N.M.S.A., 1953 Compilation which deals specifically with the question you ask. This section provides as follows:

"The division [Department] **is authorized** to suspend or revoke the license of any resident of this state or the privilege of a **nonresident** to drive a motor vehicle in this state upon receiving notice of the conviction of such person **in another state of an offense therein which, if committed in this state**, would be grounds for the suspension or revocation of the license of an operator or chauffeur." (Emphasis added).

Under Section 64-13-59, supra, a conviction in this State of driving while intoxicated does require a mandatory revocation of the person's driver's license. Thus the above-quoted statute becomes applicable. However, in view of the phrase "is authorized", it is our opinion that suspension or revocation of a driver's license for a conviction in another state is **discretionary** with your Department.

By: Oliver E. Payne

Deputy Attorney General