

## Opinion No. 72-01

January 7, 1972

**BY:** OPINION OF DAVID L. NORVELL, Attorney General Oliver E. Payne, Deputy Attorney General

**TO:** Mr. David Urioste, Commissioner of Motor Vehicles Department of Motor Vehicles, Bataan Memorial Building, Santa Fe, N.M. 87501

### QUESTIONS

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Does the one year period of drivers' license revocation for driving while intoxicated and the one year period of drivers' license revocation for refusal to submit to a chemical test run concurrently or consecutively?

#### CONCLUSION

In most cases the revocation periods will overlap since each suspension period runs one year from the happening of a certain event.

### OPINION

#### {\*2} ANALYSIS

In this jurisdiction it is mandatory that a driver's or chauffeur's license be revoked if the driver is convicted of driving while under the influence of alcohol. The revocation is for a period of one year. Section 64-13-59, N.M.S.A., 1953 Comp. For purposes of the Motor Vehicle Code the terms "conviction" and "convicted" are defined in Section 64-13-58, N.M.S.A., 1953 Comp. (P.S.). When the person is convicted, the court forwards the driving license together with an abstract of the conviction to the Commissioner of the Motor Vehicles Department. The revocation period of one year would appear to begin to run from the date of conviction as that term is defined in Section 64-13-58, **supra**. However, as a practical matter the one year begins to run from the date on which the Motor Vehicle Department received the license and abstract of conviction from the court. We so conclude because Section 64-13-62(b); N.M.S.A., 1953 Comp. provides that the person whose license was mandatorily revoked may make application for a new license "after the expiration of one (1) year from the date on which the revoked license was surrendered to and received by the division." [Motor Vehicle Department]

The Implied Consent Act, enacted in 1971 (Sections 64-22-2.4, et seq., N.M.S.A., 1953 Comp.), also contains a provision relative to revocation of the privilege to drive. The pertinent section is 64-22-2.11 which reads as follows:

**"Refusal to submit to chemical test -- Revocation of license or privilege to drive. --**

A. If a person under arrest refuses upon request of a law enforcement officer to submit to chemical tests designated by the law enforcement agency as provided in Section 64-22-2.6, NMSA 1953, none shall be administered.

**B. The commissioner, upon receipt of a sworn report of a law enforcement officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor and that, upon his request, the person refused to submit to a chemical test, after being advised that failure to submit could result in revocation of his privilege to drive; shall revoke the person's New Mexico driver's license or any nonresident operating privilege for a period of one year. . . . (Emphasis added.)**

This statute provides a separate and distinct ground for revocation of a driver's license, that is, refusal to submit to a chemical test. Such revocation is to be for one year period from the date the Commissioner revokes the license after receiving the required sworn statement from the law enforcement officer.

We see then that a one year revocation is mandatory upon conviction of driving while intoxicated. Completely separate and apart from such conviction is a one year revocation for refusal to submit to a chemical test.

The provision that a driver's license is not to be revoked for more than one {\*3} year (Section 64-13-62; **supra**) was enacted prior to the Implied Consent Law and must be read in conjunction therewith. When a driver's license is revoked for failure to take a chemical test, the period of revocation for such failure is only one year. The same is true upon conviction for driving while intoxicated.

We agree with the following reasoning of the New Jersey Supreme Court as stated in **In re Emberton**, 262 A.2d 899 (1970):

"Moreover, if there was a conviction for driving under the influence, then the six months suspension for the refusal to take the test would have to be imposed independent of and consecutive to any suspension imposed by virtue of the drunk driving conviction."

Even more to the point is a statement by the Texas court that "periods of suspension applicable to appellant's convictions are specified by the sections of the statute." **Tatum v. Texas Department of Public Safety**, 241 S.W.2d. 167.

What will happen in most cases is that the suspension or revocation periods for the different offenses will at least partially overlap. But the one year period of revocation in each instance begins to run from the date of the happening of a certain event. Thus the suspension periods are **not** consecutive in the usual sense; they are **not** to be added together to make a total of two years.

71-126

71-125

71-124

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71-118

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