

## Opinion No. 73-01

January 4, 1973

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** Mr. Paul L. Dorris Director New Mexico Law Enforcement Academy Post Office Box 2323 Santa Fe, New Mexico 87501

### QUESTIONS

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Is driving while under the influence of intoxicating liquor a crime involving "moral turpitude," so as to disqualify an applicant to the State Law Enforcement Academy?

#### CONCLUSION

No.

### OPINION

#### {\*2} ANALYSIS

At the outset, we do not wish to discount the seriousness of drunken driving, or to imply that we condone such action. There are other considerations, however, that must be weighed when defining a crime as involving "moral turpitude."

Moral turpitude has been defined by Black's Law Dictionary (4th ed. 1968) as:

"An act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.

\* \* \*

Conduct contrary to justice, honesty, modesty, or good morals."

Likewise, Ballentine's Law Dictionary (3rd ed. 1969) defines moral turpitude as:

"Baseness, vileness, or depravity in his private and social duties which a man owes to his fellow man or to society in general."

Courts have defined moral turpitude in much the same terms. **See, In re Morris**, 74 N.M. 679, 397 P.2d 475 (1964), "misconduct . . . which is contrary to honesty, modesty or good morals"; **State v. Deer**, Ohio C.P., 129 N.E.2d 667 (1955), "offends the

generally accepted code of mankind"; **Traders & General Ins. Co. v. Russel**, Tex. Cr. App., 99 S.W.2d 1079 (1936), "baseness, vileness, depravity."

Webster's New International Dictionary (2d ed. 1954) defines the following terms:

"base . . . Morally low, hence, lowminded; unworthy, without dignity or sentiment; ignoble; mean . . ."

"vile . . . Morally contaminated; befouled by or as if by sin; morally base or impure; wicked; evil; sinful . . ."

"depraved . . . Characterized by debasement, corruption, or degeneration; esp., with reference to morals, perverted; vitiated; corrupt . . ."

From this it can be seen that where certain criminal acts such as rape, murder, fraud, perjury, theft, embezzlement or bribery are involved, there can be no question but that moral turpitude is present. On the other hand, because the law does not always coincide with principles of morality, there are crimes which do not necessarily involve moral turpitude.

The State of New Mexico licenses establishments which sell intoxicating liquor by the drink and by the container. It follows that the drinking of intoxicating liquor is not, in and of itself, an act of moral turpitude. Indeed, it is generally considered socially acceptable to imbibe of alcoholic beverages.

Likewise, the act of driving while intoxicated was not considered wrong at common law. Such acts which normally at common law were not considered wrong, do not by statutory enactment making them a crime, add any element of moral turpitude. **Baker v. Miller**, 236 Ind. 20, 138 N.E.2d 145, 59 A.L.R.2d 1393 (1956).

{\*3} The following cases have held that drunken driving does not involve moral turpitude: **Traders & General Ins. Co. v. Russel**, *supra*; **Groves v. State**, 175 Ga. 37, 164 S.E. 822 (1932); **Gibbs v. State**, Tex. Cr. App., 385 S.W.2d 258 (1964); **State v. Deer**, *supra*. Cf. **In re Morris**, *supra*.

These considerations and the feeling that the act of driving while under the influence of intoxicating beverages cannot, under the ordinary meaning of the words, be interpreted to be "baseness, vileness or depravity" or to be contrary to "honesty, modesty, or good morals" lead us to the opinion that driving while intoxicated does not in and of itself, involve moral turpitude. Again, we do not wish to be understood as condoning the serious crime of driving while under the influence of intoxicating liquor. We are of the opinion, however, that this crime does not so reflect on a person's "morality, honesty, or modesty" and that the act of drunken driving is not, under the normal interpretation of the terms, an act of "baseness, vileness or depravity."

By: Randolph B. Felker

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