

Opinion No. 72-48

September 12, 1972

BY: OPINION OF DAVID L. NORVELL, Attorney General David L. Norvell, Attorney General

TO: Honorable Harry M. McAdams, State Senator, 2112 N. Fowler Hobbs, New Mexico 88240

QUESTIONS

FACTS

A motor vehicle operator has had three driving-while-intoxicated convictions and has had his driver's license revoked for five years as provided by Section 64-13-40, NMSA, 1953 Comp. Since his last conviction in June of 1971 the person has engaged in gainful employment as a salesman. On August 2, 1972 the individual applied to the District Court for the Fifth Judicial District for a limited driver's license so that he might drive a company vehicle in and around Hobbs for the purpose of selling and delivering merchandise. This driving would be done during the hours of 7:30 A.M. to 7:30 P.M. each Monday through Saturday. The limited license would be valid for one year, renewable upon good behavior. This application was approved by the District Court but the Motor Vehicle Department refuses to issue the limited license, presumably basing its denial on Attorney General Opinion No. 67-142.

QUESTIONS

Under such a factual situation can a limited driver's license be issued?

CONCLUSION

Yes.

OPINION

{*78} ANALYSIS

Two separate statutes must be considered in answering this question, the first of which is § 64-13-40, NMSA, 1953 Comp. That provides in pertinent part as follows:

"The department [MVD] shall not issue any license under the Motor Vehicle Code to any person:

* * *

E. As an operator or chauffeur, who subsequent to July 1, 1955, is three [3] times convicted of driving a motor vehicle while under the influence of intoxicating liquor or narcotic drug, regardless of whether the convictions are under the laws or ordinances of this state or any municipality or county thereof, or under the laws or ordinances of any other state, the District of Columbia, or any governmental subdivision thereof. Five [5] years after being so convicted for the third time, the person may apply to any district court of this state for restoration of an operator's or chauffeur's license and the court, upon good cause being shown, may order restoration of the license applied for."

Also involved is Section 64-13-64.1, NMSA, 1953 Comp. which provides as follows:

"Upon suspension or revocation of license following conviction under **any** law, ordinance or regulation relating to motor vehicles, a person may apply to the commissioner for a license or permit to drive, limited to use allowing him to engage in gainful employment. Upon receipt of the application with the approval of a district judge endorsed upon its face, the commissioner shall issue a limited license or permit to the applicant, showing thereon the limitation specified in the approved application. The limited license or permit to drive may be suspended as provided in section 64-13-60, NMSA, 1953."

The question then is whether during the five-year revocation period for three DWI convictions the person may apply for, and, if the conditions of Section 64-13-64.1, **supra**, are met, be issued a permit to drive "limited to use allowing him to engage in gainful employment." Our considered opinion is that he can be issued such a limited license.

Except for the difference in the length of the license revocation period, {79} the situation is identical to that where there has been a mandatory license revocation for a single DWI conviction. Section 64-13-59, NMSA, 1953 Comp. makes it mandatory that the license of any person convicted of DWI be revoked. It further provides that "any person whose license has been revoked under this section **shall not be entitled to apply for or receive any new license** until the expiration of one (1) year from the date of such revocation." Yet to our knowledge no one has ever advanced the argument that a limited driving permit cannot be issued to a person so convicted. In fact, in all probability, Section 64-13-64.1, **supra**, was enacted for this very purpose. If limited license issuance during the one year revocation period was construed to be prohibited, Section 64-13-64.1, **supra** would be rendered practically meaningless. The courts do not construe statutes in a manner that would have such an effect. See **Alvarez v. Board of Trustees of La Union Townsite**, 62 N.M. 319, 309 P.2d 989; **Trujillo v. Romero**, 82 N.M. 301, 481 P.2d 89; **Cromer v. J. W. Jones Construction Co.**, 79 N.M. 179, 441 P.2d 219.

There is no indication whatever in Section 64-13-64.1, **supra**, that it can be used only in cases of first-time convictions. And in the absence of such legislative declaration it is not to be so restricted. By its express terms the statute applies "following conviction under **any** law."

Nor do we find the principle of special statute controlling over general statute warranted in the case of Sections 64-13-40 and 64-13-64.1, **supra**. Admittedly such a distinction was made in Attorney General Opinion No. 67-142, but we believe that this was a misapplication of the doctrine. See **State v. Spahr**, 64 N.M. 395, 328 P.2d 1093. The doctrine is applicable only where one statute is considered as "special" and another as "general" **and** they cannot both stand together. In our opinion neither criterion exists in the present situation. In construing statutes the court's duty is, insofar as practicable, to reconcile different provisions so as to make them consistent, harmonious and sensible. **State ex rel. Clinton Realty Co. v. Scarborough**, 78 N.M. 132, 429 P.2d 330.

When Section 64-13-40, **supra**, was enacted in 1955 this State had no law permitting issuance of limited licenses. The law so providing was enacted in 1965 and was compiled as Section 64-22-2 (E), NMSA, 1953 Comp. In 1969 this provision was rewritten and reenacted and is compiled as Section 64-13-64.1, **supra**, so it is the later one. It would seem then that the prohibition on license issuance during the revocation period, be it one year or five years, refers to a regular driver's or chauffeur's license and not to a type of license that was non-existent at the time Section 64-13-40, **supra**, was enacted.

Attorney General Opinion No. 67-142 is overruled. Attorney General Opinion No. 69-31 is no longer applicable since the enactment of Section 64-13-64.1, **supra**.