

Opinion No. 76-15

May 21, 1976

BY: OPINION OF TONEY ANAYA, Attorney General Raymond Hamilton, Assistant Attorney General

TO: Honorable Henry M. Prelo, Magistrate Judge, Otero Magistrate District, Div. II, Alamogordo, New Mexico 88310

QUESTIONS

Question

Following a conviction for driving while under the influence of intoxicating liquors, first offense, pursuant to Section 64-22-2 (A), NMSA, 1953 Comp. (2nd Repl. Vol. 9), may a magistrate defer sentence pursuant to Section 40A-29-15 (A), NMSA, 1953 Comp. (2nd Repl. Vol. 6) in such a manner that the defendant's driver's license will not be revoked by the Department of Motor Vehicles if the defendant commits no offense during the period of deferment?

Conclusion

No.

OPINION

{*75} Analysis

Section 64-13-59 (A), NMSA, 1953 Comp. (2nd Repl. Vol. 9, 1975 Supp.) titled Mandatory Revocation of License by Department provides:

The department of motor vehicles shall forthwith revoke the license of any operator or chauffer upon receiving a record of such operator's or chauffer's conviction of any of the following offenses, whether such offense be had under state law or local ordinance, when such conviction has become final: . . . (2) driving a motor vehicle while under the influence of intoxicating liquor, narcotic drug or any other drug which renders him incapable of safely driving a motor vehicle. **Provided however, a first offender, at the discretion of the trial court after a presentence investigation, shall attend a driver rehabilitation program, also known as the "driving while intoxicated school," approved by the court and the department of motor vehicles; and upon successful completion of the program, the court may dismiss the driving while intoxicated charge whereupon it shall not be considered a conviction. . .** (Emphasis added.)

{*76} Section 64-13-58 (B), NMSA, 1953 Comp. (2nd Repl. Vol. 9) defines "conviction" and "convicted" for purposes of Section 64-13-59, **supra**, to mean that "the alleged violator has entered a plea of guilty or has been found guilty in the trial court and has waived or exhausted all of his rights to an appeal."

Opinion of the Attorney General No. 60-49, dated March 16, 1960, determined that Section 64-13-58, **supra**, is to be given its ordinary legal meaning and "that a party is convicted under that section when his guilt is established by either a plea or a verdict and it is immaterial whether a sentence necessarily or always follows it." Therefore, deferring imposition of a sentence does not affect the status of one's conviction pursuant to Sections 64-13-58 and 64-13-59, **supra**.

Section 64-13-59 A (2), **supra**, was amended in 1975 however, to provide that if a first offender shall attend and successfully complete a "driving while intoxicated school," the court may dismiss the driving while intoxicated charge and it shall not be considered a conviction. Only if this condition is met may one who has been found guilty of or entered a guilty plea to violating Section 64-22-2 (A), NMSA, 1953 Comp. (2nd Repl. Vol. 9) be relieved of his conviction and thereby retain his driver's license.