

Opinion No. 38-2003

July 15, 1938

BY: FRANK H. PATTON, Attorney General,

TO: Mr. E. J. House, Jr., Chief New Mexico State Police Santa Fe, New Mexico.
Attention: Sgt. A. B. Martinez

{*251} Under date of July 14th you inquire whether a person who has been convicted of accompanying a drunken driver is subject to revocation of his driver's license.

Subsection 4 of Section 17 of Chapter 110, Laws of 1937, provides:

"(a) The department shall forthwith revoke the license of any person upon receiving a record of the conviction of such person of any of the following crimes, whether such conviction be had under any state law or local ordinance:

* * *

"4. Any crime punishable as a felony under the motor vehicle laws of this state, or any other felony in the commission of which a motor vehicle was used."

Section 11-226, 1929 Compilation, which is a part of the motor vehicle laws of this state, makes it unlawful for any person to knowingly and wilfully accompany an intoxicated person who is operating a motor vehicle, and provides that he shall be punished upon conviction by not less than thirty days nor more than one year.

If upon conviction such person is punished by imprisonment for more than six months, he stands convicted of a felony under the motor vehicle laws of this state, in the commission of which a motor vehicle was used, and in my opinion his driver's license is subject to revocation.

In cases where such person is not punished for more than six months, the Territorial Supreme Court in Territory vs. Gonzalez, 14 N.M. 31, seems to take the view that he does not stand convicted of a felony, but of a misdemeanor, although the State Supreme Court in later cases has raised a doubt as to the correctness of such a decision. However, until this case is expressly overruled, I should say that a person convicted of the violation of Section 11-226, 1929 Compilation, and not sentenced to more than six months does not stand convicted of a felony and is not subject to have his driver's license revoked.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.