

Opinion No. 39-3024

February 10, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. J. O. Gallegos, Commissioner of Revenue, Santa Fe, New Mexico. Attention: Mr. Ray M. Hall, Director Driver's License Division

{*16} This is to acknowledge receipt of your letter of February 8th, in which you request an opinion upon the following:

1. "When a driver's license has been suspended or revoked by a Justice of Peace Court and an appeal has been perfected does the defendant have the privilege of lawfully operating an automobile until such time as the case is heard in the District Court?"
2. "Should the defendant fail to appear and judgment is rendered by default is the revocation of the driver's license effective as of the date of the judgment of the Justice of Peace Court or the District Court?"
3. "Can an arresting officer lawfully force the accused to surrender his driver's license any time before judgment is rendered in an instance where the offense is of such a nature that should he be convicted his license would be revoked?"

The questions will be answered in order.

Under Section 19, Chapter 110 of the Session Laws of 1937, a justice of the peace may suspend an operator's or Chauffeur's license if said party is convicted of a charge of reckless driving or speeding, or any misdemeanor in the commission of which a motor vehicle was used.

In case that the justice, in his discretion, desires so, he may suspend the license of such person convicted thus making this suspension a part of the judgment and sentence.

All justice of the peace court appeals are tried de novo in the district court. The suspension of the license of such person would not be enforced upon said person perfecting his appeal to the district court from the judgment and sentence.

Upon appeal from the justice of the peace court, should the defendant fail to appear and judgment was rendered by default, the revocation of the license of such person would become effective as of date of judgment of district court.

There is no provision in the Act whereby an arresting officer can force a person to surrender his operator's or chauffeur's license at any time before judgment is rendered by a court of competent jurisdiction.