

**Opinion No. 44-4583**

September 21, 1944

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. J. B. Mitchell, Director, Driver's License Division, Bureau of Revenue, Santa Fe, New Mexico

I have your letter of September 18, 1944, wherein you request an opinion of this office concerning whether or not convicts of the New Mexico State Penitentiary, operating State owned vehicles, may be licensed under the provisions of the New Mexico Driver's License Laws.

Section 68-305 of the N.M. 1941 Compilation prohibits the licensing of certain persons. The only provision of this section which would affect your question is sub-section (g), which provides:

"The department shall not issue an operator's or chauffeur's license to any person who has been twice convicted of a felony, in the commission of which felony a motor vehicle was used."

Section 68-317 of the N.M. 1941 Compilation pertains to certain circumstances wherein it is mandatory that a driver's license be revoked by the department.

Section 68-320 of the N.M. 1941 Compilation provides that any person whose license has been revoked under this act shall not be entitled to apply for or receive any new license until the expiration of one year from the date of such revocation. There is no prohibition against the licensing of inmates of the New Mexico State Penitentiary except insofar as the above provisions might apply to certain individuals in the Penitentiary.

Each application must be considered on its own merits, and if your department should find, from an examination of said applicants, that they are qualified to receive a driver's license, they need not be refused one because of the fact that they are serving time in the New Mexico State Penitentiary.

Your department, however, will have power, under the provisions of Section 68-310 of the N.M. 1941 Compilation, to impose restrictions upon licenses issued to such persons. It would further appear, from the provisions of Section 68-310, that your department would, under its general powers have the authority to refuse to examine or license any applicant who is in the New Mexico State Penitentiary, unless said application is also approved by the Warden or other proper official of said Penitentiary.

Hoping that the foregoing fully answers your question, I am

By HARRY L. BIGBEE,

Asst. Atty. General