

Opinion No. 52-5521

March 20, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. L. E. Glover U. S. Game Management Agent Fish and Wildlife Service P. O.
Box 1306 Albuquerque, New Mexico

{*230} In reply to your letter of January 15, 1952, regarding the authority of a Justice of the Peace to suspend a fine where the defendant is found guilty or has plead guilty, a survey of applicable New Mexico statutes relating to powers and procedures of Justices of the Peace shows but one specific instance when a sentence may be suspended. For your information, I quote Section 38-1204, New Mexico Statutes Annotated, 1941:

"Suspended Sentences -- When Permitted. -- Hereafter in all misdemeanor cases, where the defendant is a minor or is the husband or wife of the prosecuting witness, wherein judgment has been rendered by a justice of the peace imposing jail sentence or fine, such judgment may be suspended by him during the good behavior of the defendant upon the payment by the defendant of all costs incurred and taxed upon recommendation in writing to that effect by the prosecuting witness, or the justice of the peace may suspend sentence in such cases on his own motion."

Your attention is respectfully called to former Opinion No. 1869 issued February 1, 1938, in which this office held that justices of the peace have no authority to suspend sentences imposed by them in any cases other than those contemplated within the statute.

You further inquire whether the fine must be paid if the action of the justice was improper. It would appear that the fine must be paid. You inquire if re-filing of the case would be proper in a Justice Court in Sierra County. In my opinion, re-filing of the case is improper but the proper method is to contact the District Attorney and request him to institute mandamus action directed against the Justice to expunge the order of suspension of the fine in question.

I trust that this fully answers your inquiry.