

**Opinion No. 54-5964**

June 2, 1954

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. J. C. Enloe District Attorney Socorro, New Mexico

{\*423} Receipt is acknowledged of your letter dated May 26, 1954, in which you request an opinion concerning whether or not the City Council of the City of Socorro had the power {\*424} to take action to lower the salary of the Police Judge of that city on the 16th day of April, ten days after his election on April 6, but prior to the meeting held on the second Monday after the election provided for in § 14-1406, N.M.S.A., 1941 Comp. You state that this Police Judge filed his bond and oath on April 12. You also state that the City Council has never passed any ordinance regarding the salary of the previous Police Judge, but that it was set by resolution, and the attempt to lower the salary on April 16 was also made by resolution and no ordinance was passed.

In 1939, the Legislature created the Police Magistrate Courts and you will note that § 39-103, N.M.S.A., 1941 Comp., provides that the governing body of a municipality shall by ordinance provide as to how much the Police Magistrate shall earn.

If the governing board of the City of Socorro did not follow the statute in setting out the salary of the Police Magistrate, as provided in § 39-103, the setting up of the salary of the Police Magistrate by resolution was illegal and contrary and inconsistent with the requirements of § 39-103. This statute is mandatory, and as a matter of fact the City of Socorro has never had a legal salary set up for any of its Police Magistrates and does not have one now because it has not followed the law as set out in said Section.

Since the salary of the Police Magistrate has not been legally fixed by ordinance, an ordinance fixing the same may be passed without decreasing the Magistrate's salary during his term.

Trusting that this fully answers your inquiry, I remain

By: Hilario Rubio

Assist. Attorney General