

Opinion No. 57-49

March 14, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Hon. Patrick F. Hanagan, District Attorney, Fifth Judicial District, Roswell, New Mexico.

QUESTIONS

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Can the penalty or penalties for misdemeanors prescribed in § 64-10-7 (b), N.M.S.A., 1953 Comp., be assessed in addition to those prescribed in § 64-3-14 (d), N.M.S.A., 1953 Comp.?

CONCLUSION

No.

OPINION

ANALYSIS

Certain additional charges are provided by § 64-3-14 (d), N.M.S.A., 1953 Comp., for violation of this section, which are ten percent of the registration fee required for the motor vehicle, also \$ 1.00 for each day or part of a day such vehicle is illegally operated or transported, plus five percent of the required registration fee as collection costs to be retained by the Division to defray such costs.

Section 64-3-1, N.M.S.A., 1953 Comp., provides that violation of any provision of this "Article" (64-3-1 to 64-3-19) is a misdemeanor. Hence, violation of § 64-3-14, N.M.S.A., 1953 Comp., would be a misdemeanor.

However, § 64-10-7 (a) provides that it is a misdemeanor for any person to violate any provision of this Act (64-1-1 to 64-2-16, 64-3-1 to 64-11-14), unless declared by the Act or other Statute to be a felony. For an example of acts declared to be felonies, see § 64-10-3, N.M.S.A., 1953 Comp. All of the sections cited are part of the same Act, being parts of Laws 1953, Ch. 138 thereof.

We now come to the pivotal statutory provision, § 64-10-7 (b), which provides that "unless **another** penalty is in this act by the laws of this State provided" (Emphasis supplied), there shall be a fine of not more than \$ 100.00, imprisonment for not more than ninety days, or both, for misdemeanors under this act.

In our opinion, what we have termed "additional charges" under § 64-3-14 (d) N.M.S.A., 1953 Comp., are, in fact, penalties for tardiness or refusal in connection with obedience to the requirements of § 64-3-14, supra. Consequently, the penalty, or penalties, provided for in § 64-10-7 (b), supra, would not apply, and could not be properly assessed, for violation of § 64-3-14, supra, inasmuch as subsection (d) thereof already provides penalties for violation of the section. Or, to be less verbose, the penalty or penalties of § 64-10-7 (b) are only to be used where other penalties for misdemeanors are not **specifically** provided.

Assuming your inquiry is fully answered, we remain