

Opinion No. 58-03

January 6, 1958

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

TO: Mr. Robert Salazar, Director, Motor Vehicle Division, Bureau of Revenue, Santa Fe, New Mexico

QUESTION

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Does a police magistrate court have authority to vacate a judgment rendered by it in the course of its jurisdiction, absent any question of fraud practiced on said court?

CONCLUSION

No.

OPINION

ANALYSIS

Our research does not reveal any case decided by the Supreme Court of New Mexico which is dispositive of the issue, yet we think the question is answered by cases from other jurisdictions, as well as by secondary authorities.

In 60 Am. St. Rep. 633, it is said that while the decisions on the precise subject of the authority of a court of limited or special jurisdiction to vacate its judgments are infrequent, such decisions, as well as many general expressions in the opinions of the courts where the question wasn't necessarily involved, tend to the conclusion that, absent statutory authority, a court of limited jurisdiction, having once entered a judgment, has no authority to vacate it, whether upon proceedings seeking a new trial or otherwise. However, there is some indication in 31 Am. Jur., Judgments, Sec. 716, that the rule may not be absolutely uniform.

In the case of *Mitchell v. Oregon, Washington Credit and Collection Bureau*, 215 P 2d. 917 (Ore), it was held that the general rule is that courts of special or limited jurisdiction have no power to vacate their judgments, in the absense of statutes expressly granting such power. The same rule was announced in *Pass v. State ex rel. Board etc.*, 147 N E 287 (Ind. App.), and 49 C.J.S., Judgments, Sec. 265.

It was held in *In re Cudahy's Estate*, 219 N W 203 (Wisc), that a county court (which was apparently a court of limited jurisdiction in that state) has no power to vacate its

judgments, even in view of a statute authorizing it to amend, correct and perfect its record. The Supreme Court of Wisconsin recognized two exceptions however, saying the county court could vacate its judgments when procured by fraud, or could vacate its judgments rendered without jurisdiction.

Of interest is the case of McKenna v. Forman, 283 Ill. App. 606, holding a municipal court could vacate its judgments only in the manner provided by statute.

We have no hesitancy in holding a police magistrate court is a court of limited or special jurisdiction.

Since the foregoing rules are predicated upon absence of statutory authority to the contrary, it behooves us to consider the statutes concerning the subject courts in New Mexico. Our examination of Sec. 37-1-1, N.M.S.A., 1953 Comp., et. seq., among others, discloses no authority for police magistrate courts to vacate their judgments.

It follows we must answer your query in the negative.