

## Opinion No. 58-122

June 12, 1958

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Joel B. Burr, Jr., Assistant Attorney General

**TO:** Mr. Dan Sosa, Jr., District Attorney, Third Judicial District, Las Cruces, New Mexico

### QUESTION

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Where a police officer issues a traffic citation to an offender listing thereon the justice of the peace before whom the offender is to appear, may said offender disregard this and appear before a justice of the peace of his own choosing?

#### CONCLUSION

No, but see Opinion.

### OPINION

#### ANALYSIS

Whenever a person is arrested for any violation of the New Mexico Motor Code, compiled as Section 64-14-1 to 64-18-64, 64-19-1 to 64-22-16, N.M.S.A., 1953 Comp., and 1957 Pocket Supp., punishable as a misdemeanor, he may secure his immediate release by giving his written promise to appear in court at a time and place designated in the uniform traffic citation which is issued by the arresting officer. Authority for this procedure is found in Sec. 64-22-8, N.M.S.A., 1953 Comp, 1957 Pocket Supp., and provides in part as follows:

"(a) Whenever a person is arrested for any violation of this act punishable as a misdemeanor, and such person is not immediately taken before a magistrate as hereinbefore required, the arresting officer shall prepare in quadruplicate, using the uniform traffic citation, written notice to appear in court containing the name and address of such person, the license number of his vehicle, if any, the offense charged, **and the time and place when and where such person shall appear in court.**

(b) The time and place specified in said notice to appear must be before a magistrate within the precinct or county in which the offense charged is alleged to have been committed and who has jurisdiction of such offense.

**(c) The arrested person in order to secure release, as provided in this section, must give his written promise so to appear in court by signing at least one (1)**

**copy of the written notice prepared by the arresting officer.** The officer shall deliver a copy of the notice to the person promising to appear. Thereupon, said officer shall forthwith release the person arrested from custody." (Emphasis ours)

The language found in subsection (a) above clearly gives the arresting officer the authority to designate the justice of the peace before whom the offender is to appear inasmuch as he is required to prepare the citation listing thereon the time, place, when and where such person is to appear in court. The only limitation placed on the power of the arresting officer to designate the magistrate before whom the case will be heard is found in subsection (b) above which requires that the magistrate designated must be within the precinct or county in which the offense charged is alleged to have been committed and who has jurisdiction of such offense.

Assuming then that the arresting officer complies with subsection (b) above, the magistrate designated thereon acquires jurisdiction over the subject matter of the cause. When the arrested person, in order to secure his release, gives his written promise to appear before the magistrate designated in the citation as provided in subsection (c) above, he voluntarily submits to the jurisdiction of the court and the magistrate designated therein acquires jurisdiction over his person. See 22 C.J.S., Criminal Law, Jurisdiction By Consent, § 147.

It is fundamental that the court first acquiring jurisdiction of a cause retains it to the exclusion of all others, so long as it does not voluntarily and legally abandon it. 22 C.J.S., Criminal Law, Jurisdiction, Court First Acquiring Jurisdiction, § 111.

The court may also lose jurisdiction through disqualification by the offender as provided in Sec. 36-3-11, N.M.S.A., 1953 Comp.

It is true that under Sec. 64-22-7(a), N.M.S.A., 1953 Comp., a person arrested for a violation of the New Mexico Motor Code, *supra*, may demand that he immediately be taken before the nearest available magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of such offense and is most accessible with reference to the place where said arrest is made. But this is an option to be exercised by the offender and if he chooses not to make demand of the arresting officer, the later may proceed to issue a citation as is provided for in Sec. 64-22-8, *supra*. See also Sec. 64-22-7(b), N.M.S.A., 1953 Comp., wherein an offender is given the same option in certain more serious offenses enumerated therein.

This office, therefore, concludes that whenever the procedure outlined in Sec. 64-22-8, *supra*, is followed, the arresting officer has the authority to designate the court before whom the offender shall appear. When the arrested person, in order to secure his immediate release, gives his written promise to appear before the court designated in the citation, he voluntarily submits to the jurisdiction of the court, which is retained by the said court to the exclusion of all others until voluntarily and legally relinquished, or until disqualified as provided in Sec. 36-3-11, *supra*.

We are informed that the State Police Chief has issued an order directing all patrolmen to distribute equitably their citations among the various justices of the peace in their districts who have jurisdiction over the subject matter of the cause for which the respective citations are issued. Such a policy appears to be sound in judgment and proper under the the law.