

Opinion No. 59-207

December 17, 1959

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

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

QUESTION

QUESTIONS

1. Can a municipal judge or city police judge be disqualified?
2. May a city police judge refuse to accept property bonds for the violations of city ordinances?

CONCLUSIONS

1. Yes.
2. No.

OPINION

{*319} ANALYSIS

The first question is undoubtedly prompted by the fact that when the legislature provided for the establishment of municipal judges, it did not provide for a procedural disqualification as it has in the past for district judges, (21-5-8, N.M.S.A., 1953 Comp.), and for justices of the peace, (36-3-11, N.M.S.A., 1953 Comp.).

In determining whether or not a judge can be disqualified, we must begin with the provisions of the Constitution. The section dealing with this question is Article 6. § 18, New Mexico Constitution, which reads as follows:

"No judge of **any court** nor justice of the peace shall, except by consent of all parties, sit in the trial of any cause in which either of the parties shall be related to him by affinity or consanguinity within the degree of first cousin, or in which he was counsel, or in the trial of which he presided in any inferior court, or **in which he has an interest.**"
(Emphasis supplied)

We have no hesitation in holding that this prohibition applies to city judges, municipal judges, police judges or police magistrates, by whatever name they may be called.

In **State v. Gonzales**, 43 N.M. 498, 95 P. 2d 673, the court held that if a justice of the peace sat in the trial of a case in which he had an "interest" that he would be violating this constitutional prohibition and relief would be afforded the objecting party.

"The 'interest' which would disqualify must be, however, {320} something more than a remote, inconsequential or purely indirect one. And, such interest is interpreted by the courts in the light of the **public policy of the state and in the interest of justice and the due performance of the functions of the court.**" **State v. Gonzales**, supra. (Emphasis supplied)

The phrases "public policy of the state" and "interest of justice" can best be determined by the language of the court in the case of **State v. Armijo**, 38 N.M. 73, 28 P. 2d 511, which is as follows, in part:

"There can be no vestiture of judicial power in judges who are partial. * * *

In this connection it would be well to remember that the canons of judicial ethics adopted by the American Bar Association, 'as a proper guide and reminder for judges, and as indicating what the people have a right to expect of them,' * * * declare: 'courts exist to promote justice and thus serve the public interest * * * he (the judge) should avoid unconsciously falling into the attitude of mind that litigants are made for the courts instead of courts for the litigants * * * a judge's official conduct should be free from impropriety and the appearance of impropriety'."

In keeping with the language of **State v. Armijo**, supra, that "there can be no vestiture of judicial power in judges who are partial" and the language of Art. 6, § 18, it is our opinion that a municipal or police judge can be disqualified.

It should be pointed out that in the event of such disqualification, § 38-1-15, N.M.S.A., 1953 Comp. (P.S.), provides that any and all justices of the peace shall have concurrent jurisdiction in cases involving violations of city ordinances.

Your second question involves § 14-21-56 which provides that the city may:

"authorize the acceptance of a **bail bond** whenever any person shall have been arrested for the violation of any ordinance, and a continuance or postponement of trial **shall** be granted, and when such bond shall be accepted it shall have the same validity and effect as **bail bonds** provided for under the criminal statutes of New Mexico." (Emphasis supplied)

Section 41-4-1 provides that any person charged with an offense before any court shall be permitted to post bail under the instances and in the manner prescribed therein.

Section 41-4-15 sets out the requirements for a bail bond which is directly applicable to a property bond. Section 41-4-16 provides the form of the bond. There is no question

but that a property bond will suffice and the method by which the sufficiency is established is set out in Section 41-4-14.

Therefore, if the offense is aailable offense, a property bond may not be rejected if it meets the statutory requirements.

By: B. J. Baggett

Assistant Attorney General