

Opinion No. 60-06

January 19, 1960

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

TO: Mr. Norman Hodges District Attorney Sixth Judicial District Silver City, New Mexico

QUESTION

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Can a justice of the peace issue an arrest warrant for a person accused of a crime even though the crime may be classed as a "district court misdemeanor"?

CONCLUSION

Yes.

OPINION

{*340} ANALYSIS

In Attorney General's Opinion No. 150, 1935-36, and in Attorney General's Opinion No. 5594 language is used which would indicate that the justice of the peace could not issue a warrant in the case under consideration. Attorney General's Opinion No. 6034 holds that the complaint in the case of a "district court misdemeanor" must be filed originally in the district court.

The jurisdictional rule in Opinions No. 150, 1935-36, and No. 5594, insofar as the right to try the case is concerned, is correctly stated. However, if the language "all such cases should be filed in the district court" is interpreted to mean that the justice court has no power to issue warrants, subpoena witnesses, and hold hearings in connection with one who may be charged with a crime, regardless of the nature of the crime, then such language is in error. The language of Opinion No. 6034, which requires a complaint to be filed originally in the district court in the case of "district court misdemeanors", is plainly in error, although it would be necessary, in our opinion, to refile in district court upon determination that the justice of the peace cannot try the defendant because of jurisdictional limitations.

The controlling statutes in New Mexico are as follows:

"36-12-1. Every justice of the peace shall have jurisdiction in criminal cases throughout the county in which he was elected and where he shall reside, and shall be a conservator of the peace therein. He is authorized and required, on view or complaint made on oath or affirmation, to cause any person charged with the commission of a

crime or breach of the law, to be brought before him or some other justice of the peace, and shall inquire into the complaint, and try the same, if within the jurisdiction of a justice of the peace, and either commit to jail, discharge or recognize such person to appear before the district court, **as the case may require.** * * *" (Emphasis supplied)

"41-1-1. Whenever complaint shall be made to any judge or justice of the peace that a criminal offense has been committed, it shall be his duty to examine the complainant and any witnesses who may be introduced to him under oath; if it appear on such examination **that any crime** has been committed, the magistrate shall issue a warrant commanding the sheriff or other officer forthwith to take the accused and bring him before such magistrate, **to be dealt with according to law;** * * *." (Emphasis supplied)

Section 41-3-8, N.M.S.A., 1953 Compilation (P.S.), provides that a warrant shall issue from a justice of the peace for one accused of a felony and provides further for a preliminary hearing to be held by the justice.

{*341} There is no question but that a justice can issue a warrant for the arrest of a person accused of a felony under § 41-3-8, supra.

The justice cannot **try** the felon but the fact remains that he can and should issue a warrant for the felon's arrest upon proper complaint made.

It would be startling to hold that a felon can be arrested by a warrant issued by a justice of the peace, while holding that a certain class of misdemeanants cannot be subjected to the warrant of arrest **on the ground that the justice of the peace has no jurisdiction to try the accused** because the crime is a so-called "district court misdemeanor". The controlling statutes (41-1-1, 36-12-1) clearly give the justice of the peace the right to issue warrants, upon proper complaint, for the arrest of a person accused of **any crime.**

To the extent Opinions No. 150, 1935-36, No. 5594 and No. 6034 conflict with this opinion, they are hereby expressly overruled.

By: B. J. Baggett

Assistant Attorney General