

Opinion No. 60-147

August 9, 1960

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

TO: Senator Fabian Chavez, Jr., Chairman Judicial System Study Committee Room 201 /- State Capitol Building Santa Fe, New Mexico

QUESTION

QUESTIONS

1. What is the proper disposition of fines collected by the Willard justice of the peace acting under jurisdiction granted by § 14-23-8, N.M.S.A., 1953 Comp.?
2. Is a justice of the peace authorized to assess \$ 5.00 court costs when acting under § 14-23-8?
3. When acting as municipal magistrate, may a justice of the peace assess \$ 5.00 court costs?
4. May a municipal magistrate himself assess court costs?
5. When before a justice of the peace acting under § 14-23-8, must actions to enforce village ordinances be brought in the name of the village as is required in the cases of cities and towns under § 38-1-1, N.M.S.A., 1953 Comp.?
6. May a violation of state law cited by a state police officer be tried by a justice of the peace acting under § 14-23-8 or by a village judge (if a village judge is legal) where the arrest is made within the limits of the village?
7. May the various boards of county commissioners make a charge for supplying justices of the peace with forms and docket books required by law?

CONCLUSIONS

1. See analysis.
2. Yes.
3. No.
4. No.
5. Yes.

6. See analysis.

7. No.

OPINION

{*529} ANALYSIS

1. Willard is a properly incorporated municipality classified as a village. Section 14-23-8, N.M.S.A., 1953 Comp., reads as follows:

{*530} "The justice of peace of the precinct wherein any incorporated village is situated shall have jurisdiction of all violations of ordinances made and published by the board of trustees under the provision of this article."

This section appears to give a justice of the peace so situated, general jurisdiction of ordinances violated within that municipality. Article XII, Section 4 of the New Mexico Constitution provides that all fines and forfeitures collected pursuant to "general laws" must be placed in a current school fund. It will be admitted by all that a municipal ordinance is not a general law within the meaning of this Constitutional section the definition of a general law given by the Supreme Court of this State in **State v. A.T. & S.F. Railroad Co.**, 20 N.M. 562 seems equally applicable in this instance in that municipal ordinances do not affect all of the people in the State or even all of the people in the State of a particular class. Fines or forfeitures levied under municipal ordinances need not go to the current school fund. The logical disposition of these fines and forfeitures levied pursuant to an ordinance is for them to be credited to the municipality whose ordinance is violated. Evidence of this is found in § 38-1-1, supra, which reads as follows:

"Justices of the peace in municipalities of the state of New Mexico, when sitting as municipal judges, shall turn into the municipality all fines collected for the violation of such municipal ordinances and all moneys collected from forfeiture bonds or recognizances of such justice of the peace courts when being held as municipal courts shall be turned over to the municipality."

The article under which this section is found is entitled "Violation of Municipal Ordinances" and we feel that this section evidences the intent of the legislature that all fines and forfeitures collected for violation of municipal ordinances shall be turned over to the municipality. If a justice of the peace court acts as a municipal court, it should keep some reasonable record of fines collected under ordinances so that these fines may be properly accounted for to the city.

2. Your second question is answered in the affirmative. Section 36-19-1, N.M.S.A., 1953 Comp., reads in part as follows:

"Justices of the peace in the state of New Mexico shall hereafter be allowed and entitled to demand and receive fees hereinafter stated to-wit:

For civil or criminal case docket ____ \$ 5.00; * * *"

There is no section to be found which changes this entitlement when a justice of the peace is trying a municipal ordinance violation. By the same token, there is no statute which authorizes a justice of the peace to collect his costs from the city when the person is found innocent or when he cannot collect from the guilty defendant. If, however, the justice of the peace can collect his cost from a guilty ordinance violator, he is legally entitled to do so.

3. We are further of the opinion that a justice of the peace, when acting as a municipal magistrate, cannot collect costs. The only manner in which a justice of the peace can act as a municipal magistrate is pursuant to § 37-1-5, N.M.S.A., 1953 Comp., which provides that a justice of the peace may be appointed to serve during the incapacity of a municipal magistrate. When he is acting under this provision, however, he is not acting as a justice of the peace trying municipal violations but rather he is acting as a municipal magistrate and therefore cannot collect justice of the peace fees for his labors. Presumably, he would be paid a salary for his services inasmuch as the municipal magistrate in whose stead he is serving is salaried.

{*531} 4. The answer to your fourth question is no. A municipal magistrate authorized under Sec. 37-1-1, N.M.S.A., 1953 Comp. (P.S.), was unknown at common law and therefore can have only that power specifically granted to him by statute. There are no provisions authorizing a municipal magistrate to collect a fee or costs. He is paid by salary (§ 37-1-3) and receives no other emoluments.

5. In answer to your fifth question, we are of the opinion that all actions brought under a village ordinance before a justice of the peace acting under Sec. 14-23-8, supra, must be brought in the name of the village since a violation of these ordinances is an offense against the village rather than an offense against an individual or the State.

6. The answer to your sixth question is no, in both cases. Violations of State statutes may be tried before justices of the peace, but when such is the case, the justice of the peace would be acting pursuant to § 36-12-1, N.M.S.A., 1953 Comp., rather than § 14-23-8, supra. Justices of the peace derive their jurisdiction from the type of offense committed and from the type of law creating the offense. If the offense is created by State statute, the fine levied would be turned over to the county for the current school fund. The justice of the peace would receive his costs from the county as well as turning over to the county all costs collected by him. The only time a justice of the peace could be acting under § 14-23-8, supra, is when he has before him, an ordinance violation of a village within which his precinct falls. The geographical location of a State violation is not determinative of the question. The fact that a State statute is violated within the limits of the municipality does not bestow upon the municipality jurisdiction over the offense nor does it entitle the municipality to the fine collected thereunder.

We find no statute granting to villages the right to create the position of municipal judge. Absent this authorization, the village cannot create such an office. A justice of the peace has jurisdiction to try violations of village ordinances pursuant to § 14-23-8, supra, but this does not make him the municipal judge of that village. In addition to this jurisdiction, he has jurisdiction of violations of State laws occurring within his county whereas a municipal judge, if in existence, normally does not. See Sec. 37-1-1, supra.

7. No. Boards of County Commissioners cannot charge justices of the peace for forms issued pursuant to § 36-13-4, N.M.S.A., 1953 Comp. There is no authority found in the statutes which entitles these boards to charge for these forms. They are, therefore, under a duty to furnish these forms without charge unless specifically authorized to levy the charge. No authority existing, a charge for these forms is prohibited.

Any portions of Opinion of the Attorney General No. 60-82, dated May 4, 1960, which conflict herewith are expressly overruled.

By: Boston E. Witt

Assistant Attorney General