

Opinion No. 60-188

October 11, 1960

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

TO: Mr. Lalo Garza Assistant District Attorney Third Judicial District Alamogordo, New Mexico

QUESTION

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Does a justice of the peace have jurisdiction over the offense of driving a motor vehicle on any public highway of this State at a time when the driver's privilege to do so has been suspended or revoked?

CONCLUSION

No.

OPINION

{*588} ANALYSIS

Section 64-13-68, N.M.S.A., 1953 Comp., makes it a misdemeanor for a person to drive a motor vehicle on any public highway of this State at a time when the driver's privilege to do so has been suspended or revoked. The same section imposes as a penalty upon conviction of such misdemeanor imprisonment for not less than two days nor more than six months and "there may be imposed in addition thereto a fine of not more than \$ 500.00." Your question is precipitated by the fact that the fine which may be imposed exceeds the jurisdictional limits of justices of the peace.

Section 36-2-5, N.M.S.A., 1953 Comp., provides as follows:

{*589} "Justices of the peace are hereby given jurisdiction in all cases of misdemeanors where the punishment prescribed by law may be a fine of one hundred dollars (\$ 100) or less, or imprisonment for six (6) months or less, or may be both such fine and imprisonment. Provided, that this act (section) shall not apply to misdemeanors, jurisdiction whereof is exclusively vested in district courts."

This office has previously had occasion to consider this jurisdictional question in relation to offenses, the penalty for which exceeds either one or both of the above statutory limitations. A.G. Opn. No. 5594, dated September 25, 1952; A.G. Opn. No. 6034, dated November 8, 1954; A.G. Opn. No. 60-148, dated August 10, 1960; A.G. Opn. No. 59-155, dated September 30, 1958.

Since the first above-mentioned opinion, this office has held without exception that where the maximum penalty which may be imposed exceeds the jurisdictional limits of the authority of a justice of the peace that that court thereby loses jurisdiction to try the person accused. In large part, this is for the reason that to do otherwise would be to lessen the penalties which the legislature has deemed assessable for the named offense.

Section 129, Criminal Law, Vol. 22, CJS, states as follows:

"The penalty which attaches to a particular offense often determines which court has jurisdiction thereof, and the general rule has been stated to be that no court can have jurisdiction of an offense punishable by penalties which are beyond the power of the court to impose."

We believe this to be the better rule and, therefore, continue to subscribe to the view as above mentioned.

Therefore, in conclusion, it is our opinion that because of the maximum penalties which may be imposed for violation of Section 64-13-68, N.M.S.A., 1953 Comp., the justice of the peace courts have no jurisdiction to try a person for that offense. While there may be some language in our Opinion No. 60-95 which appears to be contrary, it is clear that the writer of that opinion was not considering the question at hand and in referring to a justice of the peace court, was using the term in the context in which the question was raised.

By: Thomas O. Olson

First Assistant Attorney General