

## Opinion No. 60-199

October 17, 1960

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

**TO:** Mr. Merrill L. Norton Hanners and Norton Town Attorneys, Town of Tatum 116 North Love Street Lovington, New Mexico

### QUESTION

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1. Does a city or town magistrate have the power to commute a sentence after the guilty party has been ordered committed, and before the pronounced sentence has been fully served?
2. May a town or city police officer acting as such, issue a traffic citation to a juvenile or to an adult requiring such an offender to appear and answer to the complaint before a Justice of the Peace Court in a precinct located outside the said town or city?

#### CONCLUSIONS

1. No.
- 2.. No.

### OPINION

#### {\*604} ANALYSIS

In your first question, you use the word "commute". "Commutation" is defined in **Black's Law Dictionary**, (4th Ed. 1951) as the act of substituting one thing for another; the change of a punishment from a greater to a less, as from hanging to imprisonment; a "commutation" means merely a change of punishment, while a "pardon" avoids or terminates punishment for crime. The same authority defines "suspend" as a postponement of a sentence, and "reprieve" as the stay of execution {\*605} of a sentence for an interval of time. From these definitions, we see that a "suspension" postpones the issuance of execution of a sentence indefinitely a "reprieve" stays the execution of sentence imposed, usually for a fixed interval of time, a "commutation" reduces the sentence imposed, as from life imprisonment to a period of years, and a "pardon" terminates a sentence.

The power to grant "reprieves" and "pardons" is vested in the governor by Article V, Section 6 of our Constitution. It was suggested in Opinion of the Attorney General No. 1175, Report of the Attorney General 1914, page 32, that not even the Governor has

the power to "commute", for that power is not included in the terms "reprove" and "pardon". It was held, however, that the Governor could grant a pardon on condition of service of some other sentence or term of imprisonment, which would have the effect of a commutation. But the concluding paragraph of the opinion expressed doubt whether the district court could change the sentence of a prisoner after commitment.

The power of "commutation" is nowhere expressly granted to any court in New Mexico, nor to any other branch of government, or governmental official. We might conclude simply that, in the absence of the grant of such a power, the power does not exist and may not be exercised. But we feel that your first question also involves the power of a city or town magistrate, more properly called a "police magistrate court", to "alter" or "suspend" its sentence after commitment has issued, and will deal with it on that basis.

Volume 15, Am. Jur., 1960 Pocket Supplement, page 27, reads:

"It has been generally held that the power which a trial court may exercise over its judgments during term, or during a fixed statutory time following their entry, does not extend to authorize revision or modification of a valid sentence in criminal cases after the commitment of the defendant thereunder; its power of revision of the sentence exists only so long as it remains unexecuted. And the great weight of authority supports the rule that when a valid sentence has been put into execution, the trial court cannot modify, amend, or revise, it in any way, whether during or after the term of session of the court at which the sentence was pronounced; any attempt to do so is of no effect and the original sentence remains in force."

Several opinions of this office have consistently held that, a **district court**, after commitment has issued, has no power to suspend, alter, revise, or otherwise modify its sentence. See Opinions of the Attorney General No. 3273, September 11, 1939, No. 4072, April 21, 1942, and No. 59-122, August 27, 1959.

Section 36-12-4, N.M.S.A., 1953 Compilation, authorizes a **justice of the peace court** to suspend its sentence in certain instances. Opinion of the Attorney General No. 1869, February 1, 1938, held that justices of the peace could suspend their sentences only in accordance with this statute, and that, in the absence of statute, a justice of the peace had no power to suspend or alter his sentence in any way. This position was reaffirmed in Opinion of the Attorney General No. 5521, March 20, 1952.

Police magistrate courts are created and governed by Sections 37-1-1 to 37-1-9, N.M.S.A., 1953 Compilation (P.S.). The jurisdiction and powers of such courts are stated in Section 37-1-2, and are as follows:

"Such municipal courts shall have jurisdiction over all offenses and complaints arising under the ordinances and laws of such cities and towns and shall have the power to issue subpoenas and warrants and {\*606} the power to punish for contempt."

In Opinion of the Attorney General No. 58-3, January 6, 1958, we dealt with the question whether a police magistrate court could vacate its judgment. It was held that, in the absence of statutory authority to do so, a police magistrate court has no power to vacate its own judgment. It is readily seen that there is no statutory authority for a police magistrate court to "commute", "suspend", "vacate", "revise", or to modify in any manner the judgment it has rendered. Since the police magistrate court can only exercise the powers with which it is invested by law, and no power of commutation, suspension, or modification is granted, we are of opinion that a police magistrate court cannot commute, suspend, alter, revise, or modify its sentence in any way, whether or not commitment has issued on that sentence.

Your second question will be answered in two parts: The first will deal with traffic citations issued to juveniles, the second with traffic citations issued to adults.

Section 13-8-20 (P.S.) N.M.S.A., 1953 Compilation, defines "juvenile" as a person less than eighteen years of age, and "adult" as a person eighteen years of age or older. Section 13-8-26 provides:

" **The juvenile court shall have exclusive original jurisdiction** in proceedings:

A. Concerning any juvenile under the age of eighteen (18) years living or found within the county;

(1) Who has violated any law of the state, or any ordinance or regulation of a political subdivision thereof; Provided, however, that juveniles may in the discretion of the juvenile court be treated as adults where the juvenile has violated state traffic laws, or traffic ordinances or regulations of any political subdivision thereof: . . ."

Section 13-8-27 provides that no person under the age of eighteen years shall be charged with the commission of any offense, including a felony, in any court other than the juvenile court. Section 13-8-28 requires the transfer to the juvenile court of any case wherein a person under the age of eighteen years is charged with an offense. This section applies to traffic offenses. See Opinion of the Attorney General No. 57-106, May 16, 1957.

It thus appears that no town or city police officer may knowingly cite a juvenile offender into any court other than the juvenile court; and if a juvenile is mistakenly cited into any other court, the case must be transferred to the juvenile court. That court may, in its discretion, allow the juvenile to be treated as an adult, and taken before another court of competent jurisdiction, but all cases of traffic violations by juveniles must first be submitted to the juvenile court, as that court has **exclusive** original jurisdiction.

Now we turn to your question as it relates to adults, that is, to persons eighteen years of age or older. If the traffic citation is given for a violation of State Law, as city or town policemen have power to do under Section 64-22-8, but the person arrested is not required by law to be taken directly to a magistrate, the arresting officer is to issue him a

uniform traffic citation, which designates, among other things, the time and place where the person arrested is to appear in court. Sub-section (b) of Section 64-22-8 provides:

"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."

We ruled in Opinion of the Attorney General No. 58-122, June {\*607} 12, 1958, that the arresting officer could designate which court the arresting person must appear in, so long as the court was within the **county** where the offense charged is alleged to have occurred, and that the person cited was bound by the arresting officer's designation. Therefore, it is our opinion that a city or town policeman could issue a traffic citation to an adult for an alleged violation of a State traffic law, and require the person arrested to appear in a justice of the peace court located in a precinct outside the municipality, so long as the court designated is within the county:

If the traffic citation is issued for violation of a municipal ordinance, we must compare several statutes to determine which justices of the peace have jurisdiction to hear the cause. Section 38-1-15, N.M.S.A., 1953 Compilation (P.S.), deals generally with violations of municipal ordinances, and provides:

**"Any and all justices of the peace shall have jurisdiction** in all prosecutions and suits for violation of any ordinance or the governing body may designate one justice of the peace who shall have such jurisdiction exclusively." (Emphasis supplied)

The jurisdiction of a justice of the peace extends throughout the county in which he is elected. See Section 36-12-1 and Section 36-2-8, N.M.S.A., 1953 Compilation. But a justice of the peace has no jurisdiction to try misdemeanors committed in a county other than the county in which he is elected. See Opinion of the Attorney General, No. 3841, July 21, 1941. Since these limitations exist on the jurisdiction of all justices of the peace, we feel that the words "any and all", as used in Section 38-1-15, supra, are not used in an absolute sense, but merely mean that all justices of the peace **otherwise having jurisdiction**, shall continue to have jurisdiction unless a particular justice of the peace is designated by the governing body of the municipality to have exclusive jurisdiction.

Moreover, other statutes also deal with the question of the jurisdiction of justices of the peace to hear cases of violations of municipal ordinances, and we feel that those statutes must be read in conjunction with Section 38-1-15, supra. Your question relates to "cities" and "towns", and we turn first to Article 25, N.M.S.A., 1953 Compilation, dealing generally with the subject of Ordinances, and find in Section 14-25-1 thereof:

"Municipal corporations shall have power to make and publish, from time to time, ordinances not inconsistent with the laws of the state, for carrying into effect or discharging the powers and duties conferred by law, and such as shall seem necessary and proper to provide for the safety, preserve and health, promote convenience of such corporation and the inhabitants thereof, and to enforce obedience to such ordinances by

finer not exceeding three hundred dollars (\$ 300), or by imprisonment not exceeding ninety (90) days, by suit or prosecution before any justice **of the peace within the limits of such city or town.**" (Emphasis supplied)

This section is clearly a limitation on the powers of cities and towns to provide for enforcement of municipal ordinances. Jurisdiction to hear cases of violations of municipal ordinances is limited to justices of the peace whose precincts are wholly or partly within the limits of the municipality.

Section 14-22-11, N.M.S.A., 1953 Compilation, is a statute dealing specifically with violations of ordinances enacted by towns or villages that were incorporated under Chapter 32, Session Acts of 1891, and provides:

{\*608} **"The justice of the peace of the proper precinct shall** have jurisdiction of all violations of ordinances made and published by the board of trustees, under the provisions of this articles." (Emphasis supplied)

Though no clarification of "proper precinct" is given, when read in conjunction with Section 14-25-1, supra, it becomes clear that the "proper precinct" is one lying wholly or partly within the limits of the municipality.

Though your question does not relate to villages, we might point out Section 14-23-8, N.M.S.A., 1953 Compilation, dealing with violations of village ordinances:

**"The justice of the 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 provisions of this article." (Emphasis supplied)

After reading all of these related statutes, we are of opinion that a city or town policeman, when issuing a traffic citation to an adult for the violation of a municipal ordinance, cannot require the offender to appear before a justice of the peace court located in a precinct outside the limits of the municipality. Of course, if the governing body of the municipality has designated one particular justice of the peace within the municipality to hear all cases of violations of municipal ordinances, pursuant to Section 38-1-15, supra, then all traffic citations should be directed to that justice of the peace.

The answers to your second question have assumed that the offense charged is one within the jurisdictional limits of a justice of the peace court, as set out in Section 36-2-5, N.M.S.A., 1953 Compilation.

By: Norman S. Thayer

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