Opinion No. 61-126

December 6, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E. Payne, Assistant Attorney General

TO: Mr. Philip T. Manly, Attorney, State Judicial System Study Committee, Santa Fe, New Mexico

QUESTION

QUESTION

Does the general grant of criminal jurisdiction to justice of the peace contained in Section 36 - 2 - 5, as amended in 1961, repeal or limit specific grants of criminal jurisdiction over specific crimes such as contained in Section 64-22-2 (c) and in other statutes granting specific jurisdiction over specific crimes?

CONCLUSION

No.

OPINION

ANALYSIS

Section 36-2-5, N.M.S.A., 1953 Compilation, dealing generally with the jurisdiction of justice of the peace courts' and as enacted in 1915 provided as follows:

"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 or less, or imprisonment for six months or less, **or may be both such fine and imprisonment.** Provided, that this act shall not apply to misdemeanors, jurisdiction whereof is exclusively vested in district courts." (Emphasis added).

The underlined portion of the above-quoted statutes was confusing and necessitated an inquiry as to whether a justice of the peace had jurisdiction over a misdemeanor which carried a penalty, a part of which exceeded the jurisdictional limit set forth in Section 36-2-5, supra, and a part of which did not; for example, violations of the Boat Act which prescribes a maximum term of imprisonment of six months and/or a maximum fine of $ 300.00.

Our answer to this inquiry is contained in Opinion No. 60-148 wherein we stated that if the penalty for a misdemeanor set by the legislature prescribes a fine or imprisonment or both, and either the fine or imprisonment provision exceeds the limits set forth in

Section 36-2-5, supra, justice of the peace courts are without jurisdiction to try such a violation. **Jucker v. Records Court of Irvington,** 133 N.J.L. 12, 42 A.2d 269. Our Supreme Court recently so held. **Griffith v. State,** 68 N.M. 359, 362 P.2d 513. However, we went on to point out that "This does not disturb the jurisdiction of misdemeanors specifically granted to justice of the peace courts by the legislature."

In 1961 the New Mexico Legislature clarified Section 36-2-5, supra, by amending it to read as follows:

"Justices of the peace have jurisdiction in all cases of misdemeanors where the punishment prescribed by law is a fine of one-hundred dollars (100.00) or less, or imprisonment for six months or less, or where fine or imprisonment or both are prescribed but neither exceeds these maximums. This section does not apply to misdemeanors where jurisdiction is exclusively vested in district courts."

In our view, this amendment made no substantive change whatever in this statute. It simply made it completely clear, without the necessity of statutory interpretation, that if either the fine or term of imprisonment provided for in a misdemeanor statute which is silent as to justice of the peace jurisdiction exceeds the $ 100.00 or six months maximum, the justice of the peace court has no jurisdiction.

This brings us to the question of whether Section 36-2-5, supra, as amended in 1961, precludes justice of the peace courts from trying misdemeanor cases over which it has been **specifically** granted jurisdiction by the legislature if the maximum fine or term of imprisonment set out in the specific statute exceeds the limits contained in Section 36-2-5, supra.

Our opinion is that it does not. As previously pointed out, prior to amendment of Section 36-2-5, supra, this office interpreted the Section to operate exactly as it does now. And we stated at that time that this Section does not remove or limit justice of the peace courts' jurisdiction as to misdemeanors over which it has been specifically granted jurisdiction. Opinion No. 60-148.

There are some jurists who have taken the position that the 1961 amendment did make a substantive change in Section 36-2-5, supra, and that accordingly this Section should be considered to have been enacted in 1961. They point out that Section 64-22-2, dealing specifically with driving while intoxicated, providing a penalty therefor which exceeds the limits set forth in Section 36-2-5, supra, and providing that justice of the peace courts shall have concurrent jurisdiction with district courts over first offenses, was enacted in 1953 and amended in 1955. Their theory then proceeds under the following line of reasoning: the general statute relative to misdemeanor jurisdictional limits for justices of the peace courts' being the later enactment, it controls over the earlier specific statute which gave such courts jurisdiction over a first offense of driving while intoxicated.

While we do not believe the 1961 amendment of Section 36-2-5, supra made any substantive changes therein, and therefore should not be considered as having been enacted in 1961, we will proceed on the premise that it actually is the later enactment.

Proceeding thusly, the following issue becomes determinative of the answer to the question presented: Does a **later** general statute dealing with a particular subject control over an earlier specific statute which deals with the same subject in a more limited manner to the extent of any conflict between the two?

The rule is stated as follows in Maxwell on Interpretation of Statutes (1937) p. 156:

"It is but a particular application of the general presumption against an intention to alter the law beyond the immediate scope of the statute to say that a general act is to be construed as not repealing a particular one . . . a general **later** law does not abrogate an earlier special one by mere implication.

"In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special act.

"Having already given its attention to the particular subject and provided for it, the legislature is reasonably presumed not to intend to alter that special provision by a subsequent general enactment unless that intention be manifested in explicit language or there be something which shows that the attention of the legislature had been turned to the special act and that the general one was intended to embrace the special cases provided for by the previous one, or there be something in the nature of the general one making it unlikely that an exception was intended as regards the special Act. **In the absence of these conditions, the general statute is read as silently** excluding from its operation the cases which have **been provided for by the special one."** (Emphasis added).

The same principle is stated in 50 Am. Jur., Statutes, § 561, as follows:

"As a general rule, however, general or broad statutory provisions do not control, modify, limit, affect or interfere with special or specific provisions. To the contrary, to the extent of any irreconcilable conflict, the special or specific provision modifies, qualifies, limits, restricts, excludes, supersedes, controls, and prevails over the general or broad provisions . . ."

50 Am. Jur., Statutes, § 562, goes on to state as follows:

"The rule that a statute relating to a specific subject controls a general statute which includes the specific subject in the generality of its terms **is not dependent upon the time of the enactment of such statutes. It prevails without regard to priority of enactment . . .."** (Emphasis added).

Our Supreme Court adopted this rule in **Levers v. Houston,** 49 N.M. 169, 159 P.2d 761. A few of the many cases applying the above quoted rule in other jurisdictions are the following: **Faver v. Cleveland Circuit Court,** Ark., 227 S. W. 2d 453; **State v. Toups,** La., 95 So. 2d 55; **State v. Board of Examiners of State** 121 Mont. 402, 194 P.2d 633; **Henrich v. Hoffman,** 148 Ohio St. 23, 72 N.E. 2d 458; **C.I.R. v. Rivera's Estate,** 214 F.2d 60.

It is true that this rule of interpretation or construction must yield where there is a manifest legislative intention that the general act shall be of universal application notwithstanding the prior specific act. **Homestead Valley Sanitary Dist v. Donohue,** Cal., 81 P.2d 471. But in the face of two important canons of statutory construction (presumption against repeal by implication and rule that special act controls over general act to extent of any conflict), it takes a strong showing of such legislative intention to create an exception to the general rule. **Haffner v. Director of Public Safety of Lawrence,** 329 Mass. 409, 110 N.E. 2d 369. And frankly we find absolutely **no** intention that the 1961 amendment was designed to repeal specific acts giving justice of the peace courts jurisdiction over certain misdemeanors where the penalty prescribed exceeds that set forth in Section 36-2-5, supra. In fact, as we said, our opinion is that the 1961 amendment of this Section was for clarification purposes only and made no substantive change in the law.

Apparently some District Courts in New Mexico take a view contrary to that here expressed. However, our analysis of the law leads us inescapably to the conclusion that we here set forth. Perhaps the only method by which the two divergent positions can be reconciled is a test case.