

Opinion No. 61-72

August 8, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Norman S. Thayer, Assistant Attorney General

TO: Mr. Philip T. Manly, Attorney, State Judicial System Study Committee, 201 State Capitol Building, Santa Fe, New Mexico

QUESTION

QUESTION

Can the penalties for misdemeanors prescribed in Section 64-10-7, N.M.S.A., 1953 Compilation be assessed in addition to those prescribed in Section 64-3-14 (d), N.M.S.A., 1953 Compilation?

CONCLUSION

Yes.

OPINION

ANALYSIS

You have requested us specifically to reconsider the conclusion reached in Attorney General's Opinion No. 57-49, March 14, 1957, when the same question was presented to us.

Section 64-10-7, N.M.S.A., 1953 Compilation provides:

"(a) It is a misdemeanor for any person to violate any of the provisions of this act unless such violation is by this act or other law of this state declared to be a felony. (b) unless another penalty is in this act or by the laws of this state provided, every person convicted of a misdemeanor for the violation of any provisions of this act shall be punished by a fine of not more than one hundred dollars (\$ 100.00), or by imprisonment for not more than 90 days, or by both such fine and imprisonment."

Section 64-10-7, provided that all violations of "this act" are misdemeanors, unless declared by law to be felonies. Hence, a violation of Section 64-3-14 (d) is a misdemeanor, because that section is a part of "this act." See Chapter 138, Laws of 1953.

Section 64-10-7, goes on to provide a fine and imprisonment for misdemeanors. This punishment is to be assessed "unless another penalty is in this act or by the laws of this state provided."

Section 64 - 3 - 14, (d) provides penalties for operating or transporting a vehicle upon the highways of the state without having paid the registration fees or without having secured and constantly displayed the proper registration plates. The penalties prescribed are an increase in the registration fee of 10%, plus one dollar per day for each day of illegal operation, plus 5% of the registration fee as collection costs to be retained by the division of motor vehicles.

The question becomes whether these penalties are the type of penalties contemplated by Section 64-10-7. After all, the penalties of Section 64-10-7 are imposed on misdemeanors, criminal acts. Fines collected under Section 64-10-7 are paid into the current school fund under Section 4, Article XII, Constitution of New Mexico.

The penalties prescribed by Section 64-3-14 (d) are not criminal penalties, but are in the nature of administrative assessments for late registration. This is shown by the fact that the penalties assessed are not payable to the current school fund. The 5% penalty is retained by the motor vehicle division as collection costs. The 10% and one dollar per day penalties are paid into the motor vehicle fund. See Section 64-11-12, N.M.S.A., 1953 Compilation.

In our opinion, when Section 64-10-7 speaks of "another penalty", it means another penalty for the criminal act. Such a penalty must be either a term of imprisonment or a fine payable into the current school fund. The administrative penalties of Section 64-3-14 (d) do not meet this test.

This situation is not unusual. For example, an individual may be subjected to criminal prosecution for failure to file a tax return, and, in addition, may be assessed an administrative penalty for filing a delinquent return. Neither penalty excludes the other.

By the same token we feel that the criminal penalties prescribed by Section 64-10-7 do not exclude imposition of the administrative penalties prescribed by Section 64-3-14 (d). Therefore, in our opinion, the penalties prescribed by Section 64-10-7 can be imposed in addition to the penalties prescribed by Section 64-3-14 (d).

Attorney General's Opinion No. 57-49, March 14, 1957 is overruled.