Opinion No. 62-104

August 3, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General J. E. Gallegos, Assistant Attorney General

TO: Mr. Louis R. Lopez, Administrative Assistant to Court Administrator, Supreme Court Building, Santa Fe, New Mexico

QUESTION

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1. Are there instances when a justice of the peace should enter more than one charge on each criminal complaint?

2. If the answer to Question No. 1 is yes, then when is joinder of charges proper?

CONCLUSIONS

1. Yes.

2. See analysis.

OPINION

ANALYSIS

The point of departure for this opinion is recent Attorney General Opinion No. 61-128, December 8, 1961. There it was concluded that a Justice of the Peace could assess only one five dollar docket fee even though two or more charges are filed against a defendant in one criminal complaint. Without discussion, that opinion properly assumed that joinder of charges against the same person in a single complaint is permissible. **State v. Compton,** 57 N.M. 227, 251 P. 2d. 915; **State v. Brewer,** 56 N.M. 226, 242 P. 2d. 996; **27 Am. Jur.** "Indictments and Informations" Section 130. The question presented here goes the next step further and takes us into the problem of when should there be joinder of charges.

Most of the law in this area is stated in reference to criminal informations, whereas, accusations of crimes made before a Justice of the Peace in this state are in the form of a complaint. See §§ 36-21-1 and 36-13-1 (P.S.), N.M.S.A., 1953 Compilation. For that reason we point out that the names "complaint" and information" are used interchangeably and refer to the same kind of pleading. **Sekt v. Justices' Court,** 26 Cal. 2d. 297, 159 P. 2d. 17; **State v. Stafford,** 26 Idaho 381, 143 P. 528.

The main reason for joining in one complaint or information two or more offenses committed by the same person is the practical advantage of having only one trial and thus one presentation of evidence, and the avoidance of unnecessary costs. Serving the ends of practicability by combining charges is most desirable in cases of petty misdemeanors as was pointed out in **State v. Brewer,** supra, at page 229:

"That it is an advantage to the state in many ways can not be gainsaid. Likewise, and especially in the case of petty crimes and misdemeanors as in this case, advantages to a defendant may easily be seen. Indeed, one of the considerations prompting adoption at common law of the rule permitting joinder with greater liberality in the case of misdemeanors than felonies, as pointed out in the case of Gould v. State, 66 Tex. Cr. 421, 147 S.W. 247, was the hardship imposed on a defendant by way of annoyance and expense who, faced with a multiplicity of prosecutions for minor infractions of the law, might be enabled to dispose of all in a single trial as against an alternative of many."

1. Should Charges be Joined?

The desirability of joining charges and a requirement of doing so are, of course, different things. Thus, we note § 36-19-5, N.M.S.A., 1953 Compilation, which says, "No justice of the peace or constable shall split up and divide his charge for services so as to make two (2) or more charges, when the law intended but one (1) . . ." The five dollar fee assessed for the filing of each complaint is a charge for services by the Justice of the Peace. See § 36-19-1, N.M.S.A., 1953 Compilation.

A Justice of the Peace is often in the unique position of being the drafter of complaints for presentation of criminal charges which he will himself hear and render judgment upon. If not personally the drafter of the complaint, then the Justice of the Peace is often in a position where his influence, be it on police officer or private citizen, will determine whether charges will be combined in one complaint or a separate complaint will be made for each charge. And for each complaint made the Justice of the Peace is entitled to assess a five dollar fee. This being the circumstance, there is a great deal of responsibility on the Justice of the Peace in fulfilling his judicial duties to look primarily to ". . . the hardship imposed on a defendant by way of annoyance and expense who (is) faced with a multiplicity of prosecutions for minor infractions of the law . . ." **State v. Brewer,** supra.

Because of (a) the prohibition in § 36-19-5, supra, against splitting charges and (b) the responsibility of avoiding the imposition of unnecessary annoyance and expense on a defendant, we conclude that in those instances in which it is proper to join two or more charges against the same person in a single complaint the Justice of the Peace should do so.

The inquiry now becomes, when is it proper to join charges in one complaint? The authorities agree that charges can be joined when they involve the same general nature or class of crimes, and when all the offenses grow out of the same transaction or series

of transactions or connected transactions. **State v. Brewer,** supra; 5 **Wharton's Criminal Law and Procedure,** § 1935; **27 Am. Jur.** "Indictments and Informations" § 130.

A typical example of charges involving the same general class of crimes which a justice of the peace often handles, is where one person has passed several fraudulent checks. See §§ 40-21-1 and 40-21-2, N.M.S.A., 1953 Compilation.

A typical example of charges growing out of the same transaction is where a motorist's driving has resulted in his being issued traffic citations for driving under the influence of intoxicating liquor, reckless driving, speeding, etc.

What we have concluded here is not to be taken as any impediment to the right of a defendant, where charges have been combined in one complaint, to apply to the Justice of the Peace to split the charges or to direct an election of charges by the complainant or the District Attorney. An application to sever or elect charges calls forth the exercise of a sound judicial discretion and can be granted when the defendant presents proper grounds. **State v. Compton,** supra; **State v. Brewer,** supra.