

Opinion No. 64-158

December 30, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Frank Bachicha, Jr., Assistant Attorney General

TO: Lowell C. Green, Director, Administrative Office of the Courts, Supreme Court Building, Santa Fe, New Mexico

QUESTION

QUESTION

Do justices of the peace have jurisdiction over cases involving violations of Class "A" County Ordinances?

CONCLUSION

No.

OPINION

ANALYSIS

Section 15-43-1, N.M.S.A., 1953 Compilation (P.S.) provides for the classification of counties for salary purposes. Bernalillo County is thus classified, because of its assessed valuation and population, as a Class "A" County.

Class "A" Counties are granted the power to enact ordinances by Section 15-36-26, N.M.S.A., 1953 Compilation (P.S.) in the following language:

"CLASS A COUNTIES -- POWER TO ENACT ORDINANCES. -- Class A Counties are granted the same powers to enact ordinances that are granted to municipalities except for those powers that are inconsistent with statutory or constitutional limitations placed on counties."

The boundaries within which these ordinances are effective is outlined in Section 15-36-27, N.M.S.A., 1953 Compilation (P.S.) as follows:

"AREAS IN WHICH CLASS A COUNTIES ORDINANCES ARE EFFECTIVE. -- Class A county ordinances are effective within the boundaries of the county, including privately owned land by the United States, except that the ordinances are not effective within the limits of any incorporated municipality."

Provision for the enforcement of these county ordinances and the penalties to be imposed upon a violation thereof is set forth in Section 15-36-28, N.M.S.A., 1953 Compilation, which reads as follows:

"ENFORCING CLASS A COUNTY ORDINANCES -- JURISDICTION. -- Class A ordinances may be enforced by prosecution for violation of those ordinances in any court of competent jurisdiction of the county. Penalties for violation of any Class A County ordinance shall not exceed a fine of three hundred dollars (\$ 300) or imprisonment for ninety days or both that fine and imprisonment."

It is to be noted, with respect to the general jurisdiction of justices of the peace in criminal cases, that Section 36-2-5, N.M.S.A., 1953 Compilation, directs that:

"JURISDICTION OVER MISDEMEANORS. -- 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) 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." (Emphasis supplied)

In addition to the above, justices of the peace may be and have been given specific jurisdiction over other offenses by the legislature, even though the maximum fine or term of imprisonment set out in the specific statute exceeds the limits set forth in Section 36-2-5, supra. However, no such specific jurisdiction has been granted to these courts to hear and determine causes arising from violation of county ordinances. On the other hand the small claims court, created by Section 16-5-1, N.M.S.A., 1953 Compilation, and originally granted "general civil jurisdiction coextensive with the county, in all civil causes in which the matters in controversy shall not exceed in value the sum of \$ 2,000.00, exclusive of interest," will have, effective January 1, 1965, "jurisdiction coextensive with the county: . . . In all matters involving violation of county ordinances. . . ."

Section 15-36-28, supra, sets forth a maximum limitation for penalty upon violation of a Class "A" county ordinance. This, however, may not prevent a Class "A" county from enacting ordinances with penalties conforming to the jurisdictional limitations spelled out in Section 36-2-5, supra. The question then arises as to whether justices of the peace could legally exercise jurisdiction in those cases involving violation of ordinances where the penalty prescribed by law is "a fine of one hundred dollars (\$ 100) or less, or imprisonment for six (6) months or less, or where fine or imprisonment or both are prescribed but neither exceeds these maximums." An answer in the affirmative would mean that the jurisdiction of justices of the peace over Class "A" county ordinances would, in effect, be dependent upon the will of the Board of County Commissioners, since this body could effectively abrogate such jurisdiction by raising the maximum penalty over the limitation of Section 36-2-5, supra.

Our Constitution, at Section 26, Article VI, sets forth the extreme limits of jurisdiction of justices of the peace. Within these limits the legislature may further prescribe their jurisdiction. Can it be said then that there has been, in practical effect, a partial delegation of this power to the Board of County Commissioners of Class "A" counties, as above suggested? We believe not. Without an expressed legislative intent to that effect, we cannot assume that such delegation of power has, in fact, taken place.

It is interesting to note that in at least two specific instances, involving the authority of the county to regulate certain activities, the legislature has seen fit to grant specific jurisdiction over the violation of ordinances, adopted pursuant to that authority, to the district court of the county. See Sections 14-28-19 and 15-36-25, N.M.S.A., 1953 Compilation. This grant of specific jurisdiction, coupled with the maximum penalty provided for in Section 15-36-28, *supra*, exceeding the general jurisdiction of justices of the peace, and the impropriety of assuming that a delegation of power, as above discussed, has taken place, are all highly indicative of the intent of the legislature to deny jurisdiction over violation of county ordinances to justices of the peace.

Our opinion therefore, based upon the foregoing analysis, is that violations of Class "A" County Ordinances are not to be entered in the justice of the peace criminal complaint books, since no jurisdiction exists in these courts to hear such causes.