

## Opinion No. 65-127

July 9, 1965

**BY:** OPINION OF BOSTON E. WITT, Attorney General Frank Bachicha, Jr., Assistant Attorney General

**TO:** Lowell C. Green, Court Administrator, Supreme Court Building, Santa Fe, New Mexico

### QUESTION

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Is a District Attorney's directive valid which requires that all complaints against offenders who are booked into the McKinley County Jail and accused of violating a petty misdemeanor statute under the criminal code of the State of New Mexico shall be filed by the Sheriff or the State Police in the Justice of the Peace Court located in the McKinley County Courthouse in order to eliminate the time-consuming and expensive transportation of those individuals to Justice of the Peace Courts of the same county but located away from the county seat, i.e., Gallup, New Mexico.

#### CONCLUSION

See Analysis.

### OPINION

#### {\*213} ANALYSIS

The directive in question herein as originally issued on February 25, 1965, read in pertinent part as follows:

"In order to assure the orderly and efficient administration of justice in McKinley County, and in order to expedite the disposition of offenders who are booked into the McKinley County Jail accused of the violation of the Petty misdemeanor statutes of {\*214} the State of New Mexico by either of the two above named law enforcement agencies (New Mexico State Police, Gallup, New Mexico, and Sheriff of McKinley County) each of you are hereby directed to comply with the following procedure, to wit:

1. That Complaint in these cases shall be filed in the Court of the Justice of the Peace, Precinct No. 3, Gallup, New Mexico, whose office is located in the McKinley County Courthouse. Compliance with this provision will eliminate the time-consuming and expensive transportation of those accused to Justice Courts located away from the county seat. . . ." (Parenthesis supplied.)

Subsequently, on March 1, 1965, a revision was made to the above quoted directive by Louis E. Depauli, District Attorney for the Eleventh Judicial District. Incorporating the revised language in paragraph 1 above, the following would result:

"In order to assure the orderly and efficient administration of justice in McKinley County, and in order to expedite the disposition of offenders who are booked into the McKinley County Jail accused of the violation of the petty misdemeanor statutes **under the criminal code** of the State of New Mexico by either of the two above named law enforcement agencies. . . ." Emphasis supplied.)

Two of the duties of the District Attorney specified by Section 17-1-11, New Mexico Statutes Annotated, 1953 Compilation, are:

"1. To prosecute and defend for the state in all courts of record of the counties of his district, all cases, criminal and civil, in which the state or any county in his district may be a party, or may be interested or concerned; . . .

3. To advise all county and state officers whenever such advise is requested; . . ."

Further Section 17-1-13, New Mexico Statutes Annotated, 1953 Compilation permits the District Attorney to appear and represent the county or state in any matter arising before the Justice of the Peace Courts "when in his opinion the interests of the people demand his services."

It is to be noted that the directive relates only to those cases involving "violation of the petty misdemeanor statutes under the criminal code," and only when the accused is booked into jail. Justices of the Peace, pursuant to Section 36-2-5 New Mexico Statutes Annotated, 1953 Compilation, are given jurisdiction over violation of the petty misdemeanor statutes. While Section 17-1-13, supra, does permit the District Attorney to appear in Justice of the Peace Court, in some instances involving petty misdemeanors, the District Attorney does not, in fact, represent the State; rather, the law enforcement officer filing the complaint appears without counsel in Justice of the Peace Court.

The reasons (contained in the directive) which are given for requiring all of the subject causes to be filed in Justice of the Peace Court, Precinct No. 3, Gallup, New Mexico, are said to be: "to expedite the disposition of offenders" and "to eliminate the time-consuming and expensive transportation of those accused to Justice Courts located away from the county seat."

We have been advised that previous practice of law enforcement officers in McKinley County has been, in those instances where arrest and incarceration were effected, to return the accused for hearing or trial to the Justice of the Peace Court of the precinct where the offense was committed. There is available in McKinley County only one jail which is located at Gallup, the county seat. After presentation of the accused {<sup>\*215</sup>} individuals before the Justices of the Peace, many had to be returned to jail because of

their inability to furnish bond for their release. This meant, of course, that every time an accused, being held in jail, was required to appear before the Court, law enforcement officers had to furnish transportation and time.

The basis for the directive in question is made obvious when one considers the facts such as the following: There are Justice of the Peace Courts in seven (7) precincts in McKinley County, three of which are located in Gallup, proper; one, in Gamarco some three miles from the county seat; one, in Thoreau, some thirty miles from the county seat; one, in Crownpoint, some forty miles from the county seat; and one at Ambrosia Lake Station approximately fifty miles away from the county seat.

It would appear that transportation of prisoners as far as fifty miles away, or thirty for that matter, for presentation before a Justice of the Peace, would not be expedient considering that there are courts with equivalent jurisdiction available nearby. As to this, the subject directive is practical. Certainly the same reasons, i.e., time loss and expensive transportation, could not exist for eliminating those courts situated within three miles from Gallup as for those situated 30, 40 or 50 miles away. Neither may we ignore the fact that Justices of the Peace are compensated for their work on a per case fee basis. This does not mean, of course, that law enforcement officers must distribute their cases equally among Justices of the Peace, disregarding expediency or cost. But it does mean that where possible, and within reasonable bounds, law enforcement officers should not be required to apply to one designated court to the exclusion of all others similarly situated and possessing equal jurisdiction.

The primary question here concerns the power of the District Attorney to direct law enforcement officers in the manner sought to be done by the subject Directive. There does not appear to be any specific statutory authority upon which we can rely. The District Attorney is designated as "the law officer of the state and of the counties within his district" by Article VI, Sec. 24, of the New Mexico Constitution. And, we note again that one of the duties of the District Attorney as per Section 17-1-11, supra, is to "advise all county and state officers **whenever such advice is requested.**" (Emphasis supplied.) On the other hand the Board of County Commissioners is the governing body of the county, with the attendant power and duty to safeguard county property consistent with State law. See Section 15-37-16 N.M.S.A., 1953 Compilation.

It is our opinion, therefore, based upon the above analysis that a District Attorney is not vested with power to enforce the subject directive. He may, of course, advise and suggest to law enforcement officers the necessity of their acting in conformance with his judgment, but he has no power to compel such action.

Such lack of power in the District Attorney notwithstanding, Section 39-1-1, N.M.S.A., 1953 Compilation imposes a duty upon every peace officer in this State "to cooperate with and assist the Attorney General, District Attorney, or other prosecutor, if any, in all reasonable ways."

We feel compelled to note, in view of our opinion herein, that as a practical matter the District Attorney may file a complaint in any Justice of the Peace Court which he deems proper (absent an abuse of discretion) in **any** criminal action which he desires to prosecute. This is so by virtue of the powers granted him by Section 17-1-13, supra, to appear in Justice of the Peace Court as discussed on page 3, supra.