

Opinion No. 65-236

December 9, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Gary O'Dowd, Assistant Attorney General

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

QUESTION

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Do justices of the peace have jurisdiction to hear city ordinance violations?

CONCLUSION

No, but see analysis.

OPINION

{*386} ANALYSIS

Justices of the peace have been given general jurisdiction over misdemeanors "where the punishment prescribed by law is a fine of one hundred dollars (\$ 100.00) or less, or imprisonment for six (6) months or less, or where fine or imprisonment or both are prescribed but neither exceeds these maximums." Section 36-2-5, N.M.S.A., 1953 Compilation.

Section 14-25-1, N.M.S.A., 1953 Compilation, repealed by Laws 1965, Chapter 300, Section 595, granted power to municipal corporations to enforce obedience to its ordinances "by fines not exceeding three hundred dollars (\$ 300), or by imprisonment not exceeding ninety (90) days, by suit or prosecution **before any justice of the peace** within the limits of such city or town." Thus prior to 1965 justices of the peace were given jurisdiction over violations of municipal ordinances by statute. This jurisdiction was taken from them in 1965 by repeal of Section 14-25-1, supra.

In 1961 the legislature enacted Section 37-1-2, N.M.S.A., 1953 Compilation which provides as follows:

"Each municipal court has jurisdiction over all offenses and complaints under ordinances of the municipality and may issue subpoenas and warrants and punish for contempt."

We can find no other authority for courts other than municipal courts to hear city ordinance violations and therefore we must conclude that only Municipal Courts have original jurisdiction to hear violations of municipal ordinances.

This does not mean that justices of the peace may not sit as municipal judges as provided in Section 37-1-5 N.M.S.A., 1953 Compilation. Section 37-1-5 provides as follows:

"Temporary incapacity -- Justices of the peace. -- An attorney or justice of the peace may be appointed to the office of municipal judge during the temporary incapacity or absence of any municipal ordinances while sitting as municipal judge. The governing {387} body may establish a procedure by ordinance for appointment."

Section 37-1-3 N.M.S.A., 1953 Compilation, however, may result in some justices of the peace being unqualified for appointment to the office of municipal judge during a temporary vacancy. Section 37-1-3, supra, provides that the qualification of municipal judges may be provided by ordinance of the municipality. Thus if a municipality, by ordinance, requires that their municipal judge or judges be attorneys, then a justice of the peace would have to be an attorney before being appointed to fill a temporary vacancy under Section 37-1-5, supra.