

Opinion No. 66-23

February 14, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Wayne C. Wolf, 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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Does a justice of the peace have jurisdiction over a case filed in his court by an officer of the National Guard for infraction of Section 9-5-5, N.M.S.A., 1953 Compilation?

CONCLUSION

No.

OPINION

{*26} ANALYSIS

It is apparent that some of the offenses mentioned in Section 9-5-5, N.M.S.A., 1953 Compilation, would be felonies under the New Mexico Criminal Code. Those particular offenses would be triable in district court only after an indictment by the grand jury or information filed by district attorney or attorney general. Only in time of actual war would these offenses be triable by military court-martial. **State ex rel. Sage v. Montoya**, 65 N.M. 416, 338 P. 2d 1051. Thus it would appear that these particular offenses would be triable only by the civil authorities in time of peace and only by the district court after proper information or indictment.

We therefore turn our attention to all those offenses which would not fall within the exclusive province of the district court. In each paragraph of Section 9-5-5, N.M.S.A., 1953 Compilation, the legislature has directed that the named offense be tried by a general, special or summary court-martial. {*27} For instance paragraph E of that section states:

"Any officer, warrant officer, or enlisted man, . . . who shall fail to report at any ordered formation . . . shall be tried by a general, special or summary court martial. . . ."

The language used is mandatory and indicates the intent of the legislature that exclusive jurisdiction of the named offenses should be in the appropriate military court. Our conclusion about the mandatory use of the word "shall" is enhanced by the fact that

this entire section is concerned primarily with offenses which are strictly of a military nature, and which have no counterpart in the Criminal Code. It is entirely reasonable, and in fact expected, that such offenses should be tried by the military tribunals mentioned. It is therefore apparent that the legislature intended the various courts-martial have exclusive jurisdiction of the offenses mentioned in Section 9-5-5, supra.

It is our conclusion that the exclusive jurisdiction to try the offenses enumerated in Section 9-5-5, supra, lies in the appropriate court-martial except for those offenses which our Constitution requires be tried in the district courts. In no event are any of the offenses mentioned triable in justice of the peace court.