

Opinion No. 69-133

November 20, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Gary O'Dowd, Deputy Attorney General

TO: Honorable Dorothy E. Sanchez, Magistrate, 310 West High Grants, N.M. 87020

QUESTIONS

QUESTIONS

The careless driving statute, Section 64-22-3.1, N.M.S.A. (1969 P.S.), and several other statutes in the Motor Vehicle Code, provides that a violation constitutes a misdemeanor. Does the magistrate court have jurisdiction to try these offenses?

CONCLUSION

See analysis.

OPINION

{*216} ANALYSIS

Section 36-3-4, N.M.S.A., (1969 P.S.) vests the magistrate with criminal jurisdiction as follows:

"A. Magistrates 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 [6] months or less, or where fine or imprisonment or both are prescribed but neither exceeds these maximums. Magistrates also have jurisdiction in any other criminal action where jurisdiction is specifically granted by law, and they may hold preliminary examinations in any criminal action where authorized by law.

"B. In any criminal action in the magistrate court which is beyond the jurisdiction of the magistrate court, the magistrate may commit to jail, discharge or recognize the defendant to appear before the district court as provided by law. Whenever the defendant is bound over to the district court, the magistrate shall forthwith deliver to the clerk of the district court a transcript of all proceedings in the magistrate court in the action."

Thus the magistrate has jurisdiction to try misdemeanor offenses for which the **maximum** penalty is a fine of \$ 100.00 and/or imprisonment for six months.

The careless driving statute, *supra*, is a part of the Motor Vehicle Code and provides that any person convicted of careless driving is guilty of a misdemeanor. There appears to be some confusion as to whether the misdemeanor penalty provided in Section 40A-29-4, N.M.S.A., 1953 Comp., of the Criminal Code applies to offenses contained in the Motor Vehicle Code. However, Section 40A-29-11, N.M.S.A., 1953 Comp., indicates that any crime not in the criminal code and not classified as a felony shall be punished as a petty misdemeanor. See also **State v. Sawyers**, 79 N.M. 557, 445 P.2d 978 (1968). Furthermore, Section 64-10-7, N.M.S.A., (1969 P.S.) provides:

"A. It is a misdemeanor for any person to violate any provision of the Motor Vehicle Code unless the violation is declared a felony.

"B. Unless another penalty is specified in the Motor Vehicle Code, every person convicted of a misdemeanor for violation of any provision of the Motor Vehicle Code shall be punished by a fine of not more than one hundred dollars (\$ 100) or by imprisonment for not more than ninety [90] days, or both."

{*217} Therefore, it is our opinion that the magistrate court has jurisdiction to try misdemeanors in the Motor Vehicle Code unless the penalty for the offense specifically imposes a maximum fine of **more** than \$ 100 and/or six months imprisonment.