

## Opinion No. 69-53

June 5, 1969

**BY:** OPINION OF JAMES A. MALONEY, Attorney General Mark B. Thompson, III,  
Assistant Attorney General

**TO:** Mr. Johnny A. Taylor, Commissioner, Motor Transportation Department, P.E.R.A.  
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### QUESTIONS

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Do magistrate courts have jurisdiction to try cases arising out of violations of the Motor Transportation Act?

#### CONCLUSION

No.

### OPINION

#### {\*78} ANALYSIS

Jurisdiction of magistrates over criminal matters is set out in Section 36-3-4, N.M.S.A., 1953 Compilation, 1968 Interim Supp.

"JURISDICTION -- CRIMINAL ACTIONS. -- 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 {\*79} jurisdiction is specifically granted by law, and they may hold preliminary examinations in any criminal action where authorized by law."

The penalty provisions of the Motor Transportation Act are set out in Section 64-34-27, N.M.S.A., 1953 Compilation, (1967 Supp):

"PENALTY FOR VIOLATIONS OF ACT. -- The violation of any of the provisions of the Motor Transportation Act is a misdemeanor punishable by a fine of not less than fifty dollars (50) and not more than two hundred dollars (\$ 200) or imprisonment not exceeding 30 days, or by both fine and imprisonment. The payment of a fine under the provisions of this or any other act under the jurisdiction of the motor transportation department shall not relieve the offender from the payment of any fees or taxes, or of any other of the provisions of the Motor Transportation Act. The department may also,

for the proper enforcement of the duties imposed upon the department, detain any motor vehicle whose operator and owner of either of them is in violation of any of the provisions of the Motor Transportation Act."

It is quite evident that the punishment prescribed by the Motor Transportation Act is not a fine of \$ 100.00 or less, but may be a fine of not more than \$ 200.00. Furthermore, it does not specifically grant jurisdiction to magistrates (Or to the former justices of the peace, see Section 36-1-38, N.M.S.A., 1953 Compilation, 1968 Supp.) One cannot compare the Motor Transportation Act provision and the magistrate court jurisdiction section without concluding that the magistrate does not have jurisdiction to try cases arising out of violations of the Motor Transportation Act.

The jurisdiction of magistrates in misdemeanor cases is similar to the jurisdictional limit of the former justice of the peace courts. See Laws 1915, Chapter 13, Section 1 and Laws 1961, Chapter 14, Section 1. The justice of the peace statutes likewise use the "punishment prescribed by law is a fine of \$ 100 or less" language. Attorney General Opinion No. 64-14, dated February 12, 1964 held that justice of the peace courts did not have jurisdiction to try cases arising out of violations of the Plumbing Administrative Act, Section 67-22-21, N.M.S.A., 1953 Compilation. That latter statute prescribed a penalty of not less than \$ 25 or more than \$ 200.

The foregoing Attorney General Opinion also discussed the question of whether or not a justice of the peace could take the case as long as a fine of not more than \$ 100 was imposed. The opinion states, and we agree in the present case that:

"It is not sufficient that the amount of fine or imprisonment or both, which is actually imposed in a given case be within the maximum; rather, it is the 'punishment prescribed by law' which is controlling . . ."

The logic of that opinion is inescapable, for to rule otherwise, would allow the magistrate and the prosecutor for the Motor Transportation Department to, in effect, amend the Motor Transportation Act in order to impose fines of not more than \$ 100. "In ordinary criminal prosecutions, the severity of the penalty authorized, not the penalty actually imposed, is the relevant criterion . . ." **Frank v. United States**, 37 U.S.L.W. 4437 (U.S. May 19, 1969).

It should be noted that this opinion does not concern actions brought to enforce the Motor Carrier Act. See Section 64-27-62, N.M.S.A., 1953 Compilation. Cases arising under that statute may legally be brought before a magistrate.