

Opinion No. 70-45

April 28, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: Mr. Robert H. Graham Assistant City Attorney City of Farmington P.O. Box 900
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QUESTIONS

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1. Does a municipal judge have power and authority to issue valid search warrants where the evidence to be seized will be used to prosecute violations of municipal ordinances?
2. Does a municipal judge have power and authority to issue valid search warrants where the evidence to be seized will be used to prosecute violations of state laws?

CONCLUSIONS

1. Yes.
2. No.

OPINION

{*77} ANALYSIS

1. Section 37-1-2 (A), N.M.S.A., 1953 Compilation (1969 P.S.), provides:

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."

Although this statute does not clarify exactly what sort of warrant may be issued by the municipal court, it is reasonable to assume that the Legislature did not contemplate that the municipal court would be authorized to issue financial "warrants." Hence, the Legislature must have intended to authorize the municipal court to issue warrants to be used in legal proceedings arising from offenses and complaints under municipal ordinances. This office is of the opinion, therefore, that the municipal court may issue whatever warrants might be necessary and appropriate to offenses and complaints arising from municipal ordinances. Such warrants could include a bench warrant, a search warrant, or an arrest warrant. Compare **State v. Barreras**, 64 N.M. 300, 328 P.2d 74 (1958).

2. Search warrants for violations and offenses under state laws may be issued only by courts of competent jurisdiction. Compare **Torres v. Glasgow**, 80 N.M. 412, 456 P.2d 886 (ct. App. 1969). Such courts of competent jurisdiction are those presided over by "a justice, judge or magistrate." Section 41-18-1, N.M.S.A., 1953 Compilation (1969 P.S.). Those courts are the ones having competent jurisdiction over offenses arising under state laws.

Municipalities possess only that power and authority which has been granted or delegated to them by the state. **Bowdich v. City of Albuquerque**, 76 N.M. 511, 416 P.2d 523 (1966). Unless a municipality has been granted authority to prosecute violations of state laws, a municipal court would have no jurisdiction over such offenses. Unless the municipal court possesses such power, it would not be a competent court to issue search warrants for violation of state laws.

The State of New Mexico has not granted municipalities the power or authority to prosecute violations of state laws. Rather, as suggested above in Section 37-1-2 (A.), the jurisdiction of the municipal court is specifically limited to violations arising under municipal ordinances. The jurisdiction of a municipal court is further confined to the municipal limits in which that court resides. Attorney General Opinion No. 64-96, issued July 27, 1964.

{*78} While this office is fully aware of the many problems which exist in parts of the state regarding the availability of a court of competent jurisdiction to issue warrants for violations of state laws, the solution to the problems is legislative rather than administrative or interpretative.

By: James C. Compton, Jr.

Assistant Attorney General