

Opinion No. 71-33

February 24, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. Lee Garner New Mexico Livestock Board 113 Third S.W. Albuquerque, New Mexico

QUESTIONS

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Can violations of the Meat Inspection Act, Sections 54-8-6, **et seq.**, N.M.S.A., 1953 Compilation, which are designated as misdemeanors but which do not have a penalty stated within the Meat Inspection Act, be brought in magistrate court?

ANSWER

Yes.

OPINION

{*48} ANALYSIS

Section 36-3-4, N.M.S.A., 1953 Compilation, (1969 Supp.), limits the criminal jurisdiction of magistrate to those misdemeanors where the punishment prescribed by law is a fine of one hundred dollars or less, or imprisonment for six months or less, or both. Thus, the answers to your question becomes one of what penalty can be imposed, because, if the penalty exceeds imprisonment for more than six months or a fine of more than one hundred dollars, it is clear that the magistrates would have no jurisdiction.

Section 54-8-15, N.M.S.A., 1953 Compilation, (1969 Supp.), states that certain conduct under the terms of the Meat Inspection Act is prohibited and that the commission of the act is a misdemeanor. However, the penalty which is to be imposed upon the conviction of these misdemeanors is not stated in the Meat Inspection Act.

Section 40A-29-11, N.M.S.A., 1953 Compilation, provides for the penalty to be imposed for all crimes which are not contained in the Criminal Code and for which no sentence is stated. This section provides:

A. Whenever a defendant is convicted of a crime under the Constitution, or a statute not contained in the Criminal Code, which specifies the penalty to be imposed on conviction, the court shall have the power to pronounce sentence and imposition of fine in accordance with the provisions prescribed by such statute or constitutional provision for the particular crime of which such person was convicted.

B. A crime declared to be a felony by the State Constitution or a statute not contained in the Criminal Code, without specification of the sentence or fine to be imposed on conviction, shall constitute a fourth degree felony as prescribed under this code for the purpose of the sentence and shall be so sentenced.

C. Any other crime for which the sentence to be imposed upon conviction is not specified shall constitute, for the purpose of sentence, a petty misdemeanor.

Violations of the Meat Inspection Act must therefore come within the terms of part "C" of the quoted statute since the violation is not declared to be a felony and the sentence to be imposed is not specified. Thus, a violation of the Meat Inspection Act for the purpose of sentence must amount to a petty misdemeanor.

Section 40A-29-4, N.M.S.A., 1953 Compilation, provides that upon conviction of a petty misdemeanor the judge shall sentence such person to imprisonment not to exceed six months, {*49} or the payment of a fine not more than one hundred dollars, or both. This sentencing authority is clearly within the jurisdiction of the magistrate courts and actions to prosecute violators of the Meat Inspection Act may be brought in magistrate court.

By: John A. Darden Assistant Attorney General