

## Opinion No. 71-27

February 16, 1971

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** The Honorable Robert H. Bradley Magistrate, Division I Otero County Courthouse  
Alamogordo, N.M. 88310

### QUESTIONS

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Does Section 36-21-25(A) limit the magistrate court to fix the amount of bail not to exceed twice the amount of a maximum fine for the offense, when there is also a concurrent provision for a jail sentence?

#### CONCLUSION

Yes.

### OPINION

#### {\*43} ANALYSIS

Section 36-21-25(A), N.M.S.A., 1953 Comp. (1969 P.S.) is set out in pertinent part:

{\*44} "(a) OFFENSES WITHIN MAGISTRATE TRAIL JURISDICTION . . . . the magistrate shall thereafter require the defendant to plead to the complaint . . . . If the defendant pleads 'not guilty' the action shall be set for trial as soon as possible and the magistrate shall fix the amount of bail, not to exceed twice the amount of the maximum fine for the offense, or release the defendant on his own recognizance."

It is our opinion that there is no ambiguity in the use of the words "the magistrate shall fix the amount of bail, not to exceed twice the amount of the maximum fine for the offense." If the language of a statute is clear and unambiguous the statute must be given its literal meaning. **Weiser v. Albuquerque Oil & Gas Co.**, 64 N.M. 137, 325 P.2d 720 (1958).

However, so that there may be no confusion as to the setting of bail we cite Section 36-21-27, N.M.S.A., (1969) P.S.) Section D which states:

"BAIL WHERE DEFENDANT BOUND OVER. In all actions not within magistrate trial jurisdiction, including actions where the defendant is bound over to district court pursuant to Rules 25 and 26 [36-21-25, 36-21-26] of these rules, the provisions of sections 41-4-1 through 41-4-24 New Mexico Statutes Annotated, 1953 Compilation,

shall apply. If the offense is bailable, the magistrate shall fix bail in a reasonable amount and, if the defendant posts bail, deliver to him a bail receipt similar in form to that appearing in Appendix U [36-21-70] to these rules."

By: Frank N. Chavez

Assistant Attorney General