

Opinion No. 72-13

March 20, 1972

BY: OPINION OF DAVID L. NORVELL, Attorney General Oliver E. Payne, Deputy Attorney General Honorable Raymond G. Sanchez, State Representative, 7622 Rio Grande Boulevard NW, Albuquerque, New Mexico 87107

TO: Office of the Attorney General of New Mexico

QUESTIONS

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Which court, District or Municipal, has jurisdiction over second offense, driving while intoxicated charges?

CONCLUSION

District courts, and also Municipal courts if the charge arises under a municipal ordinance.

OPINION

{*15} ANALYSIS

Section 64-22-2, NMSA, 1953 Comp., the driving while intoxicated statute, provides as follows in paragraph C:

"Every violation of this section shall be punished by imprisonment for not less than thirty days nor more than ninety days, or by a fine of not less than one hundred dollars (\$ 100) nor more than two hundred dollars (\$ 200), or both. . . . **A second or subsequent conviction shall be punished by imprisonment for not less than ninety days nor more than one year, or by a fine of not more than one thousand dollars [\$ 1000], or both. In the case of a first offense under this section, the magistrate court has concurrent jurisdiction with district courts to try the offender.** This section does not affect the authority of a municipality, under a proper ordinance, to prescribe penalties for driving while under the influence of intoxicating liquor or drugs." (Emphasis added)

The magistrate courts that this provision is referring to are those that took the place of the old justice of the peace courts. This is clear from the 1969 amendment to the section which substituted "the magistrate court" for "justices of the peace."

Jurisdiction for this type magistrate court is set forth in Section 36-3-4, NMSA, 1953 Comp. (P.S.) as follows:

"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 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. . . .**" (Emphasis added)

Since the punishment prescribed for second DWI offenses exceeds the limitation set forth in Section 36-3-4, and further since jurisdiction has not been specifically conferred on magistrate courts (successors to justice of the peace courts), they have no jurisdiction over these offenses.

But municipal courts are another matter. Section 37-1-2, NMSA, 1953 Comp. (P.S.) provides that:

"Each municipal court has jurisdiction over **all offenses** and complaints under ordinances of the municipality. . . ." (Emphasis added)

Thus if the second offense DWI is charged on a violation of a municipal ordinance the municipal court does have jurisdiction over the matter.