

Opinion No. 87-43

August 5, 1987

OPINION OF: HAL STRATTON, Attorney General

BY: Sarah Alley, Assistant Attorney General

TO: Jacquelyn Robbins, Chief Public Defender, Public Defender Department, 142 Lincoln Avenue - Suite 500, Santa Fe, New Mexico 87501

QUESTIONS

Is the Public Defender Department obligated to provide representation in metropolitan court to all indigent defendants accused of Albuquerque city code violations?

CONCLUSIONS

The Public Defender Department must represent in the metropolitan court all indigents charged with Albuquerque city code violations that carry a possible penalty of imprisonment.

ANALYSIS

In 1980 the New Mexico legislature consolidated the Bernalillo Magistrate Court and the Albuquerque Municipal Court into the metropolitan court. Sections 34-8A-1 to 34-8A-8 NMSA (1978). Section 34-8A-2 NMSA (1978) provides that the metropolitan court "shall constitute a state magistrate court." The consolidation of the municipal and magistrate court into the metropolitan court provides for metropolitan court judges to hear cases involving violations of city and county ordinances, in addition to having jurisdiction to hear all magistrate court cases. Sections 34-8A-1 through 34-8A-8.

Section 31-15-10 of the Public Defender Act, sections 31-15-1 to 31-15-12 NMSA (1978), provides: "The district public defender shall represent every person without counsel who is financially unable to obtain counsel and who is charged in **any court** within the district with any crime that carries a possible sentence of imprisonment" (emphasis added). Section 31-15-23 of that act defines the word "court" as either a district or a magistrate court. Attorney General Jeff Bingaman found that the New Mexico legislature, by defining "court" in that act as a district or magistrate court, precluded the public defender from representing any indigent criminal defendants in municipal court. Opinion Attorney General No. 81-4 (1981). The question is whether the Public Defender Department should be representing indigents in Albuquerque's metropolitan court who are charged with city code violations where such violations normally would be heard in a municipal court. It is our opinion that the constitutional rulings that led to the Public Defender Department's creation support our conclusion that

the Public Defender must represent indigents in Albuquerque's metropolitan court whenever jail time is possible.

The sixth amendment to the United States Constitution and article II, section 14 of the New Mexico Constitution guarantee the assistance of counsel to an accused. Courts have interpreted these provisions as requiring that no indigent criminal, whether accused of a felony or misdemeanor, may be sentenced to a term of imprisonment unless the state has afforded the accused the right to assistance of appointed counsel. *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972); *State v. Sanchez*, 94 N.M. 521, 522, 612 P.2d 1332, 1334 (Ct. App. 1982), cert. denied, 94 N.M. 521, 612 P.2d 1332 (1980). The term "imprisonment" includes sentencing to jail for misdemeanors and for petty offenses, as well as sentencing to prison for more serious offenses. *Argersinger v. Hamlin*, 407 U.S. at 38.

Accordingly, the Public Defender Department's representation of indigents in metropolitan court does not depend on whether the accused has violated a city ordinance or a state statute. The Public Defender Department's scope of representation is limited statutorily to the magistrate and district courts; the legislature has designated the Albuquerque Metropolitan Court as a magistrate court. Therefore, the Public Defender Department is obligated to represent all indigents in the Metropolitan Court who are charged with any violation that carries a possible penalty of imprisonment.

ATTORNEY GENERAL

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