

## Opinion No. 13-1090

August 8, 1913

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Honorable George E. Remley, Cimarron, New Mexico.

### **FELONIES AND MISDEMEANORS.**

Distinction between felonies and misdemeanors, and jurisdiction of justices of the peace.

### **OPINION**

{\*261} I have received your letter of the 6th inst. on the subject of the distinction between a felony and a misdemeanor.

As you say, the statute provides that all crimes which are, or may be, punished by imprisonment in the penitentiary are felonies, but you ask about cases where imprisonment is prescribed as a punishment without any statement as to where the convicted person should be confined.

{\*262} By reference to Section 3500, of the Compiled Laws, you will see that it is provided that where the punishment is imprisonment for a time exceeding six months, the defendant must be imprisoned in the penitentiary, and this applies to all cases of imprisonment whether the statute provides confinement in the penitentiary or not. This I think gives a clear distinction between felonies and misdemeanors, all other offenses being misdemeanors.

You refer to Section 1 of Chapter 24 of the Laws of 1913, and ask whether the violation of that section is a felony or a mere misdemeanor. The punishment specified in that section is a fine of not more than \$ 100.00, or imprisonment not to exceed three months, or both. Bearing in mind the provision of Section 3500 of the Compiled Laws, I have no hesitation in saying that the offense must be considered as a misdemeanor only. A person sentenced to a confinement of three months would not be received at the penitentiary.

You ask further about the authority of a justice of the peace, in cases of such statutory offenses, to impose sentences of fine and imprisonment or merely sit as a committing magistrate with power to bind over to the grand jury. This involves a question as to which I have had, for many years, some doubt, and that has been as to whether a justice of the peace has any jurisdiction at all to try cases of statutory misdemeanors aside from those over which he is given jurisdiction in Section 3232 of the Compiled Laws of 1897, unless the statute creating the offense specifically gives him such jurisdiction. In actual practice, it appears to have been assumed that in all misdemeanor

cases where the punishment is within the power of the justice of the peace, he has jurisdiction to try, but in the absence of any general statute giving him jurisdiction over misdemeanors, this does not seem entirely clear. I believe there is no such general statute.

I think, however, that the course which you are pursuing is a good, practical one and will not result in any defeat of justice and that it will be well for justices of the peace to try misdemeanor cases and limit their sentences to what is authorized under said Section 3232 of the Compiled Laws, even though the statute creating the misdemeanor may authorize a higher degree of punishment. As you say to do otherwise would cause additional expense to the district court without any corresponding advantage.