

## Opinion No. 16-1853

July 27, 1916

**BY:** H. S. CLANCY, Assistant Attorney General

**TO:** Mr. C. E. Parks, Columbus, New Mexico.

**Jurisdiction of justices of the peace to punish "bootlegging" in dry districts.**

### OPINION

{\*410} I am in receipt of your letter of the 25th instant in which you inquire whether a justice of the peace has jurisdiction to impose a fine or imprisonment, or both, upon persons who are convicted of the offense of "boot-legging".

As I am informed, Columbus is an incorporated town or village. and the barter, sale or exchange of intoxicating liquors is prohibited within the municipality and within two miles of the limits thereof, such prohibition having been authorized by the result of an election held under the provisions of Sections 2940 to 2948 of the Codification of 1915. The last paragraph of Section 2943 makes it mandatory upon the municipality, in case the majority of the votes cast at the election shall be in favor of prohibition, to pass "such ordinance or ordinances as may be necessary to carry such provisions into effect", so that all prosecutions for boot-legging must be held under the town ordinance. As to whether a justice of the peace would have jurisdiction to inflict a punishment upon conviction of a violation of such ordinance, would depend upon the wording of the ordinance. If the ordinance follows the language of Section 2948 and fixes the punishment, "by a fine of not more than five hundred dollars", a justice of the peace would only have jurisdiction to hold the accused for action by a grand jury, but if the ordinance provides that the punishment may be by fine of one hundred dollars or less, the justice of the peace would have jurisdiction.

It occurs to this office that in prosecutions of this kind the desired end could be attained by requiring the accused, if the evidence warranted it, to furnish a good bond conditioned upon the action of the grand jury, such bond to be in a reasonable amount, say \$ 500, and in default in the furnishing of such bond, to commit the accused to jail. However, as before stated, the question of the jurisdiction of the justice of the peace in the imposition of a fine, depends upon the wording of the town ordinance.