

## Opinion No. 21-3080

August 9, 1921

**BY:** HARRY S. BOWMAN, Attorney General

**TO:** Mr. Edmund R. French, Justice of the Peace, Gallup, New Mexico.

### **Jurisdiction of Justice of the Peace as Trial Judge and Committing Magistrate.**

#### **OPINION**

{\*82} I have your letter of the 5th instant, requesting an opinion regarding the jurisdiction of a justice of the peace to sit both as a judge and as a committing magistrate in cases where the complaint charges the offense in such manner that it may be one either within the jurisdiction of the justice of the peace sitting as a trial judge, or also wherein he would have only jurisdiction as a committing magistrate, and you refer especially to section 1703, Code 1915, the act making it an offense to draw or handle a deadly weapon in a threatening manner at or towards another.

Under the provisions of section 1703 above mentioned, a person may be convicted of the offense and fined or be imprisoned by the justice of the peace, if the justice imposes a fine or a jail sentence within the jurisdiction prescribed by law for such justice.

The jurisdiction of the justice of the peace in criminal cases is prescribed by Chapter 13, Laws 1915, where the fine is one hundred dollars or less, or the imprisonment is for six months or less, or both such fine and imprisonment.

The jurisdiction of a justice to sit as a committing magistrate is entirely separate and distinct from his jurisdiction as a justice of the peace.

16 C.J. 155.

By virtue of the provisions of section 3180, Code 1915, a justice of the peace may sit either as a justice or a committing magistrate in the same cause and in this statute it is specifically provided he shall inquire into the complaint filed before him and try the same, if within his jurisdiction as a justice of the peace, and either commit to jail, discharge or recognize the defendant to appear before the district court in the event that he is without jurisdiction.

The justice of the peace, therefore, may hold a trial or hearing and if he determines that the offense committed is within his jurisdiction he may impose the punishment prescribed, and if he determines that the offense is one beyond his jurisdiction, then he should perform his duty only as a committing magistrate.

There have been no published opinions from this office since December, 1918. We anticipate that the opinions for the period from 1919 to 1922, inclusive, will be published at the close of the year 1922, at which time a copy will be sent you as per your request.