

Opinion No. [29-40]

April 25, 1929

BY: J. A. MILLER, Assistant Attorney General

TO: Mr. R. E. Farley, Supt., Anti-Saloon League, De Vargas Hotel, Santa Fe, New Mexico.

JUSTICE OF THE PEACE -- No jurisdiction under prohibition law. Sec. 72-102, 272-120 Code 1929.

PROHIBITION -- District Court, Commissioners, Justice of the Peace. Sec. 72-102, 272-120, Code 1929.

OPINION

I have before me the file submitted by you, which includes a compilation made by you of Liquor Laws of New Mexico, a letter by which a copy of that compilation was mailed to the mayor of Carrizozo, and the letter of inquiry addressed to you by A. H. Harvey, Justice of the Peace and Police Judge at Carrizozo.

In this letter you are requested to give any legal opinions which you may have or may secure relative to these liquor laws and your answer to certain questions. These questions I shall endeavor to answer for you.

The jurisdiction of the Justice of the Peace does not depend upon the title of the arresting officer. The jurisdiction of the Justice of the Peace in criminal matters is prescribed by chapter 13 of the Session Laws of 1915, section 1 of which is as follows:

"Section 1. Justices of the Peace are hereby given jurisdiction in all cases of misdemeanors where the punishment prescribed by law may be a fine of One Hundred Dollars or less, or imprisonment for six months or less, or may be both such fine and imprisonment. **Provided**, that this act shall not apply to misdemeanors, jurisdiction whereof is exclusively vested in District Courts."

It will thus be seen that the general jurisdiction of a Justice in a criminal matter is limited to those misdemeanors in which the punishment **prescribed by law may be** a fine of \$ 100 or less, or imprisonment for six months or less, or both. Justices sometimes fall into error in assuming that if the fine assessed is within the limits of their jurisdiction it is within the law. On this theory a Justice might assume jurisdiction to try and sentence in any case in which there is no minimum of fine or imprisonment prescribed by statute or in which the minimum falls below \$ 100 and six months, even though the maximum might run to a \$ 1,000 fine and five years imprisonment or more. Violators of the prohibition law would flock to Justices of the Peace holding such views.

Inasmuch as the questions here asked are especially with reference to House Bill No. 224, I have examined chapter 89 of the Laws of 1927, as amended by House Bill 224, and I find no penalty provided for in that act which falls within the jurisdiction of the Justice of the Peace. On all complaints filed under this act before Justices, a preliminary hearing should be had and the defendant either discharged or held to the District Court.

What has already been said seems to answer the several questions contained in paragraph 2 of Mr. Harvey's letter. We next find the question, "What are District Court Commissioners?" The inability of Mr. Harvey to understand the reference to District Court Commissioners is due to an omission in your compilation. I do not find in the copy submitted, section 4 of House Bill No. 224, that being the section providing for the district judges to appoint within each county of their districts as many District Court Commissioners as may be necessary for the enforcement of this act, and providing that such commissioners shall have the same powers to hold preliminary hearings as committing magistrates, that is, as Justices of the Peace in criminal cases in the state.

Mr. Harvey's next question is, "Can a Justice of the Peace acting as municipal or police judge issue search warrants?" This must be answered in the negative. The provision of section 4, paragraph (a) as to search warrants, is as follows:

"A search warrant authorized by this Act may be issued by a Judge of the District Court, or a District Court Commissioner."

The Legislature having prescribed by what officers a search warrant may be issued, others are excluded from that authority.

What a police judge may do will be determined by the city ordinance under which he acts in a particular case.