

Opinion No. [29-43]

October 17, 1929

BY: M. A. OTERO, JR., Attorney General

TO: Mr. John E. Ethell, Town Attorney, Alamogordo, New Mexico.

JUSTICE OF THE PEACE -- Jurisdiction under Motor Vehicle Act. Sec. 11-801, Sec. 11-869, Code 1929.

OPINION

In your letter of the 11th inst. you inquire as to whether "the present jurisdictional amount of the Justice of the Peace employed as a police magistrate is repealed by the new act."

I take it from the remainder of your letter that you refer to the Uniform Motor Vehicle Act, Chapter 75 of the Laws of 1929. Section 24 of Article VI of the Constitution of the State of New Mexico appears to have been generally construed as referring to the amounts involved in civil cases only.

A careful reading of the above mentioned Uniform Motor Vehicle Act does not reveal any specific provision fixing the limitation upon the jurisdiction of the Justice of the Peace as to amount but refers only to the description of the offense mentioned and the procedure upon arrest.

Subsection 66 of section 3564 of the Code of 1915 also refers to and fixes the limit of the amount of penalty that may be imposed by ordinance by municipal corporations but does not fix the limit of jurisdiction of any magistrate.

Sections 3168 and 3169 of the Code of 1915 as amended by Chapter 109 of the Laws of 1929 refer only to the TERRITORIAL jurisdiction of Justices of the Peace and does not refer to the AMOUNT of his jurisdiction.

Section 3621 of the Code of 1915 is in words as follows:

"Municipal corporations shall have power to make and publish, from time to time, ordinances not inconsistent with the laws of the State, for carrying into effect or discharging the powers and duties conferred by law, and such as shall seem necessary and proper to provide for the safety, preserve the health, promote the prosperity, improve the morals, order, comfort and convenience of such corporation and the inhabitants thereof, and to enforce obedience to such ordinances by fines not exceeding three hundred dollars, or by imprisonment not exceeding ninety days, by suit or prosecution before any justice of the peace within the limits of such city or town."

This section gives to the municipal corporation the authority to pass such ordinances as are mentioned therein and impose a penalty and limits the amount of the same, and directs that the prosecution shall be before a Justice of the Peace but does not specifically fix his jurisdiction as to AMOUNT.

Section 3630 of the Code of 1915 is in words as follows:

"Any and all justices of the peace shall have jurisdiction in all prosecutions and suits for the recovery of fines arising under the provisions of this chapter, or any ordinance passed in pursuance thereof, or the city council or board of trustees of any city or town may designate one justice of the peace, who shall have such jurisdiction exclusively."

This section construed in connection with section 3621 and subsection 66 of section 3564, above mentioned, might properly be taken to authorize a Justice of the Peace to exercise jurisdiction up to the amount of \$ 300 when acting under such city ordinance. But such section 3630 was enacted in 1884 and in 1915 section 1 of Chapter 13 of the Laws of 1915 was enacted, which reads as follows:

"Sec. 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."

This section of the 1915 law is not an amendment and makes no exceptions as to city ordinances and specifically fixes the limit of the jurisdiction of all Justices of the Peace as to AMOUNT under all circumstances in misdemeanor cases.

Section 1452 of the Code of 1915 defines a felony and then section 1453 defines a misdemeanor in these words: "every other public offense is a misdemeanor." Subsection 1 of Section 145 of the Code of 1915 defines a public offense in the following words:

"Sec. 1. A crime or public offense is an act or omission forbidden by law, and to which is annexed, upon conviction, either of the following punishments: . . . Second. Imprisonment; Third. Fine."

So an offense under an ordinance of a municipal corporation is a public offense and, therefore, a misdemeanor. It, therefore, appears that the above mentioned section 1 of chapter 13 of the Laws of 1915 is a statute that covers the amount of jurisdiction of Justices of the Peace under all circumstances and misdemeanor cases, including violations of city ordinances.

In 18 Am. and En., 36, we find these words:

"In the United States, Justices of the Peace have no common law jurisdiction."

On page 37 Id. the following statement is found:

"In states where the jurisdiction of Justices of the Peace is fixed and determined wholly by statutes such statutes are strictly construed. The jurisdiction will not be extended beyond the plain import of the statutes."

So that it is plain that the said section 1 of chapter 13 above mentioned would not be repealed by any indefinite inferences in the 1929 statute and it, therefore, appears that chapter 13 is the statute that covers the amount of jurisdiction of Justices of the Peace in the State of New Mexico under all circumstances in criminal matters.

Of course, under the provision of said Chapter 13, supra, the amount of the jurisdiction is limited to the maximum penalty fixed by statute for the offense. Rule as to this found stated in 18 Am. and En. 38, in the following words:

"A Justice of the Peace has no jurisdiction where the maximum penalty for the offense as alleged in the complaint is greater than such officer is authorized to impose. The test is the maximum penalty which may be imposed. If no limit is fixed to the penalty a Justice will not have jurisdiction to try the offense."

You also ask for an "opinion as to the limit of fines and imprisonment which may be imposed for violations." I take it that you mean by this question to refer to the limit of sentence that may be imposed by a Justice of the Peace and I think that the last quotation above will answer this question.

I trust that this will assist you in solving your problem.

Mr. Warfel appreciates your remembrance of him and asks me to send you his best wishes.