

Opinion No. 31-56

February 14, 1931

BY: E. K. Neumann, Attorney General

TO: Mr. James M. Dow, Capitan, New Mexico.

{*43} I have your letter of February 11, 1931 asking, among other things, for a construction of section 81-301 of the 1929 Code. This law was passed as a part of the Revenue Law of 1882, being paragraph 7 of section 96 of said law. Apparently it has no special reference to or connection with section 81-302, which provides for application to Justices of the Peace or Probate Judges for licenses to hold dances.

Section 102 of chapter 62, Laws of 1882 provides that the license tax for dances shall be collected by the county collector or his deputy. Section 33-4504 provides that the County Treasurer shall be ex-officio county collector for his county. Hence it would follow that it is the duty of the County Treasurer to {*44} collect license taxes for dances. At any rate, Justices of the Peace have at no time been designated to collect such license taxes. It is a general rule of law that license taxes shall be collected by officers intrusted with the collection of other taxes, unless the license statute designates a special collector. (37 C. J. 251).

Since the law does not require you to collect these license taxes for dances, you need not concern yourself with the special situation mentioned in your letter.

In regard to the enforcement of the gambling laws, I might say, in the first place, that a Justice of the Peace is a judicial officer and it is his duty to try such cases, within his jurisdiction, as come before him, but he is not required to act in the capacity of a peace officer and to apprehend law violators. I may say, however, that Justices of the Peace do not have jurisdiction to try gambling cases.

Under section 79-208 Justices of the Peace have jurisdiction in misdemeanor cases where the maximum sentence is a fine of not more than \$ 100.00 or imprisonment of not more than six months. The maximum penalty for gambling as defined in article 38 of chap. 35 and article 2 of chap. 58 of the 1929 Code exceeds a fine of \$ 100.00 or imprisonment for six months.

Of course, you do have authority to conduct preliminary examinations in gambling cases or other criminal cases, as set out in section 79-801.

If there are any other questions of law upon which you wish information, the district attorney of your district will, no doubt, be glad to advise you, as it is his duty so to do.

By: Quincy D. Adams,

Asst. Att'y General