

Opinion No. 33-583

April 19, 1933

BY: E. K. NEUMANN, Attorney General

TO: Honorable Juan Vigil, State Comptroller, Santa Fe, New Mexico. Attention: Mr. O. P. Coppedge

{*40} In answer to your inquiry of April 17th, relative to sale of tractor fuel which was labelled as gasoline and sold from a Sinclair gasoline pump by E. F. Harrington of Alamogordo, will say that we are not sure that we understand the situation clearly from Mr. Coppedge's letter.

If, however, we are correct in the assumption that a false representation as to the article sold was made, then, we believe there was a violation of Section 35-1928 of the 1929 Compilation, which violation is a misdemeanor, punishable by a fine of from \$ 50.00 to \$ 200.00 as provided in Section 35-1932.

This being true, and the maximum fine being beyond the powers of a Justice of the Peace to impose, it follows that such Justice of the Peace has no jurisdiction to try such case.

In such cases the complaint may be filed in the District Court and, as we view it, no preliminary examination is necessary, it being a misdemeanor unless it be held that preliminary examinations are also required {*41} in misdemeanor as well as in felony cases. This certainly has not been the practice followed in this state.

Authority for presentation of misdemeanors in the District Courts is set forth in Section 105-2206 of the 1929 Compilation, and it is specifically provided in the 4th paragraph of Section 35-4508 that there shall be no preliminary examination in misdemeanor cases.

We think therefore, that Mr. Reese is probably correct in refusing to take this matter into Justice Court, but that he may file in the District Court and without any preliminary examination.

By: FRANK H. PATTON,

Asst. Attorney General