

Opinion No. 36-1408

July 13, 1936

BY: FRANK H. PATTON, Attorney General

TO: Mr. S. H. Bernard, Justice of the Peace, Precinct No. 3, Kingston, New Mexico.

{*130} Your letter of July 10th refers to Section 11-226 of the 1929 Compilation, which has reference to driving a motor vehicle while under the influence of liquor.

You are advised that this Act has probably been superseded by the law of 1929, which is cited as Section 11-802 of the 1929 Compilation, and the penalty is set forth in Section 11-860, said penalty being imprisonment in the county or municipal jail for not less than thirty days nor more than one year, or by a fine of not less than \$ 100.00 nor more than \$ 1,000.00, or by both such fine and imprisonment.

This penalty makes a violation of the Act a misdemeanor, but at the same time it takes it out of the jurisdiction of the justice of the peace and all such cases should be filed in the District Court.