

Opinion No. 37-1665

June 7, 1937

BY: FRANK H. PATTON, Attorney General

TO: Mr. J. E. Gregg Town Marshal Alamagordo, New Mexico

{*114} This is in response to your letter dated June 3 wherein you make the following inquiry:

"In your opinion, could Municipalities under their Police Powers, where it was necessary for the promotion of peace, health and general welfare, pass an ordinance authorizing the Magistrate to issue search warrants, upon proper information, for alcoholic liquors, narcotic drugs or like contrabands being manufactured, held or sold in violation of Municipal Ordinances."

Search warrants may be issued only by constitutional or statutory authority.

{*115} "The issuance of search warrants is regulated by **constitutional** and **statutory** provisions in the several jurisdictions, the effect of such regulations being that search warrants must be issued by one authorized to do so," 56 C. J. 1209, Sec. 107.

The issuance of a search warrant is a judicial act or function.

"The issuance of a search warrant is a **judicial act**, function, and proceeding, although it is said not to require more judicial power than does the issuance of criminal warrants generally." 56 C. J. 1209, Section 109.

In reviewing our statutes and constitution, I find no authority delegated to municipalities to prescribe the **jurisdiction** and **powers** of a police magistrate or other inferior court. This is a matter for the legislature and not for the municipality, and it is my opinion that a municipal ordinance attempting to prescribe the jurisdiction or powers of any court would be invalid. See McCall vs. Carr, 125 Wash. 629, 216 P. 871.

Trusting that the foregoing sufficiently answers your inquiry, I am

By: FRED J. FEDERICI,

Asst. Atty Gen.