

## Opinion No. 38-1884

February 11, 1938

**BY:** FRANK H. PATTON, Attorney General,

**TO:** New Mexico State Police Santa Fe, New Mexico. Attention: Mr. A. B. Martinez, Sergeant

{\*213} This is to acknowledge receipt of your letter of February 1, 1938. You wish to know if justices of the peace have jurisdiction over violations arising under Section 11-803, New Mexico Statutes Annotated, 1929 Compilation, which denounces the offense of reckless driving.

Under this section the penalty for the first offense is imprisonment for a period of not less than 5 nor more than 90 days, or by a fine of not more than \$ 500.00, or by both such fine and imprisonment. A second offense is punishable by imprisonment of not less than 10 days nor more than 6 months, or by a fine of not less than \$ 50.00 nor more than \$ 1,000.00, or by both such fine and imprisonment. Jurisdiction of justices of the peace over misdemeanors is defined by Section 79-208 which reads as follows:

"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."

As a general rule, a justice of the peace has no jurisdiction in a criminal case where the maximum penalty which may be imposed exceeds the penalty which he may impose. The test seems to be not what is done but what may be done. There seems to be no diversity of opinion at all {\*214} upon this proposition. See 16 C. J., Criminal Law, Section 182, and 16 R. C. L., Section 41, p. 363. In opinion No. 56, this office held that a justice of the peace had no jurisdiction where the maximum penalty was a fine of more than \$ 100.00. It was held by this office in Opinion No. 1211 that it was a matter of serious doubt whether or not the justice of the peace had jurisdiction where the maximum fine exceeded the amount prescribed in Section 79-208, supra. However, a contrary opinion was reached by Attorney General J. M. Hervey in Opinion No. 2497 dated February 25, 1920.

The question presented is very close because of the peculiar wording of our statute inasmuch as it apparently purports to confer jurisdiction over all prosecutions "where the punishment prescribed by law **may be** a fine of \$ 100.00 or less, or imprisonment of six months or less". Thus there is much room for argument, as in the matter presented by you the punishment could be a fine of \$ 10.00, which would be within the limit prescribed by law. On the other hand, the fine could be \$ 1,000.00, which would obviously be beyond the jurisdiction of a justice of the peace.

I have searched diligently, but could find no statute like ours. Therefore at best any advice we might give would merely be our opinion, as we have no decisive precedent to guide us. However, I am inclined to the view that the Legislature meant to restrict the jurisdiction of the justice court in cases where the maximum fine may be \$ 100.00 and the maximum imprisonment six months. This for the reason that a justice court is one of limited jurisdiction and statutes conferring such jurisdiction must be strictly construed. I cannot convince myself that it was the intention of the Legislature to confer jurisdiction upon such inferior tribunals where the maximum fine could be \$ 1,000.00.

Trusting that this answers your questions, I am

By: RICHARD E. MANSON,

Asst. Atty. Gen.