

Opinion No. 39-3257

August 26, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. V. F. Romero, Justice of the Peace, Mora, New Mexico.

{*98} This office is in receipt of your letter dated August 24 making certain inquiries in connection with our game and fish laws.

Ordinarily this office renders official opinions only to state departments but since your letter presents matters of widespread interest we shall state our views and forward a copy of our letter to the State Game Warden.

We hereafter set out your inquiries, together with our views on the matter.

1. May a county sheriff file a criminal complaint against a party for game law violations without consulting the district attorney?

The sheriff certainly may file such a complaint in the justice of the peace court without first obtaining the consent of or consulting the district attorney. The sheriff should, however, before filing any criminal case or charge, consult his district attorney except perhaps in cases of emergency where the sheriff wants a warrant in a hurry in order to make an arrest of someone who is perhaps about to leave the country, etc. Of course, even if a criminal complaint is filed by the sheriff without the consent of the district attorney, the district attorney may, however, at any time step in and take charge of the case and the prosecution on behalf of the State of New Mexico because the district attorney is the chief law enforcement officer and the state's prosecutor in his district.

2. Is it within the jurisdiction of the justice of the peace to try game violation cases?

It is my opinion that it is within the jurisdiction of justices of the peace to try such cases, particularly if the charge is brought under Chapter 117 of the New Mexico Session Laws of 1931 and its amendments. In this connection I specifically refer you to Section 9 of that chapter.

3. Should the defendant plead guilty to the charge of having violated the game laws of the state, has the justice of the peace, under the law, the right to fine or send to jail the defendant in such a case?

Yes. See for example Section 7 of Chapter 117, New Mexico Session Laws of 1931.

4. To whom are fines in game violations to be remitted by the justice of the peace?

To the State Treasurer to be by the State Treasurer credited to the current school fund of the state. See Section 7 {*99} of Chapter 117, New Mexico Session Laws of 1931.

In the foregoing connection please be further advised that justices of the peace in criminal proceedings are entitled to recover their costs from their respective counties only if the proceeding before the justice of the peace was instituted at the instance of a county or state law enforcement agency. See Chapter 87, New Mexico Session Laws of 1935. Of course, the last statement should be supplemented to the extent that where the defendant is found guilty and the justice of the peace is able to recover his costs directly from the defendant, then, of course, the justice of the peace has no claim against the county.

Trusting the foregoing sufficiently answers your inquiries, I am,

By: FRED J. FEDERICI,

Asst. Atty. Gen.