

## Opinion No. 41-3973

December 15, 1941

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. Elliott S. Barker State Game Warden Santa Fe, New Mexico

{\*138} In your letter dated December 12, 1941, you request an opinion relative to three questions, as follows:

"1. In the event that a person signs the application of a non-resident for a resident license as a witness and certifies falsely that the applicant is a resident of the State, can such witness be prosecuted under the provisions of Section 57-218 and Section 57-219?

2. Do the penalties provided in Section 57-219 and Section 57-221 apply in the prosecuting of either the witness or applicant who makes false statements relative to the residence of the applicant or are these penalties superceded by the penalties provided by Section 7 of Chapter 117 of the 1931 Session Laws?

3. If the penalties provided in Chapter 57-219 are superceded by the penalties provided in Section 7 of Chapter 117 of the 1931 Session Laws, do Justices of the Peace have jurisdiction in cases arising in violation of Chapters 57-218, 57-219 and 57-221 by virtue of the authority given in Section 9 of Chapter 117 of the 1931 Session Laws or must such cases be prosecuted in the District Court?

{\*139} In answer to your first question, Section 57-218 of the 1929 Compilation provides in part as follows:

"The state game and fish warden shall prepare and furnish blank applications for all persons applying for fish or game licenses within this state. Each person, before receiving any fish or game license, shall make application therefor on a blank so provided. Among other matters which may be shown by said application shall be a statement showing the exact residence of applicant. The application shall be signed by applicant and by one other resident of the locality where such application is filed. By the signature of such other resident, the latter shall corroborate the statement of applicant as to his residence."

Section 57-219 provides in part as follows:

"Any person who shall violate the provisions of the foregoing section, or make any false statement relative to his residence, shall be deemed guilty of a misdemeanor \* \*."

Section 57-221 was passed in 1921 and pertains only to non-residents who shall secure game and fish licenses in this state. However, the two sections quoted herein pertain to

the applicant and also to the witness who under the law must certify that the applicant is a resident or corroborate the applicant's statement concerning his residence. The signature of the witness corroborating the statement of the applicant as to his residence is a necessary part of the application and is made mandatory under this law before a license may be issued. A false certificate by the witness concerning the residence of the applicant is undoubtedly a violation of the provisions of Section 57-218, and was intended to be such by the Legislature. This construction of the language in these two sections is strengthened by the fact that for a long period of years the State Department of Game and Fish has construed these sections in this manner, and has consistently prosecuted violations thereof due to false certificates of the witness in an application for a resident license.

For these reasons, I believe your first question should be answered affirmatively with the understanding that the maximum penalty which may be imposed is that as discussed in answering your second question.

Relative to your second and third questions, under the Constitution the justice of the peace court is established, and under Section 79-218 of the 1929 Compilation, the general jurisdiction in misdemeanor cases is limited to a fine of \$ 100.00 or imprisonment for six months or both. However, in connection with municipal powers under Section 90-901, a municipality is empowered to pass ordinances providing for penalties for the violation of such ordinances in a sum not to exceed \$ 300.00 or by imprisonment not exceeding 90 days. This act, in effect, increases the jurisdiction of justices of the peace acting as police magistrates in imposing fines for the violation of municipal ordinances and the increased jurisdiction in excess of that generally given to justices of the peace has been upheld by the Supreme Court in the case of *City of Clovis v. Dendy*, 35 N.M. 347, 297 Pac. 141.

Proceeding upon the assumption that the general jurisdiction of justices of the peace may be likewise increased insofar as maximum penalties for game law violations may be concerned, I am of the opinion that Section 7, Chapter 117, Laws of 1931, supercedes {\*140} Sections 57-219 and 57-221 insofar as the maximum penalty which may be imposed is concerned, and since Section 9 of Chapter 117, Laws of 1931, specifically gives jurisdiction in all cases involving violations of the game and fish laws to justices of the peace, there can be no question but that your second and third questions should also be answered affirmatively.

By C. C. McCULLOH,

Asst. Atty. General