

**Opinion No. 45-4770**

August 17, 1945

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{\*118} I have your letter of August 14, 1945 wherein you enclose a letter of August 9, 1945 from Adela Gonzales, County Clerk, Dona Ana County, New Mexico, concerning the jurisdiction of the justices of the peace where juveniles are concerned.

Section 44-110 of the Supplement to the 1941 Compilation provides in part as follows:

"Whenever anyone under the age of eighteen (18) years is charged with the commission of a crime or the violation of an ordinance before any city magistrate or justice of the peace, the city magistrate or justice of the peace shall certify that the person is so charged and shall transmit the records of the case to the clerk of the juvenile court and thereupon the juvenile court shall exercise jurisdiction and the city magistrate or justice of the peace shall thereupon dismiss such charges."

This provision of our law is mandatory and no city magistrate or justice of the peace has any jurisdiction to proceed to try a juvenile for the violation of any crime or ordinance. The duty of the justice of the peace or the city magistrate is to immediately transfer all charges concerning juveniles to the juvenile court according to the procedure quoted above, and the said officers are only entitled to fees in connection with cases involving juveniles inconsistent with the performance of the statutory duty. Therefore, if the justice of the peace or the city magistrate should fail to transfer the case as provided by statute and proceed with the cause, they will not be entitled to receive any fees incurred after the failure to certify the matter to the clerk of the juvenile court and dismiss such charges.

By HARRY L. BIGBEE,

Asst. Atty. General