

Opinion No. 52-5542

May 26, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Abner Schreiber Assistant District Attorney for Los Alamos County Los Alamos, New Mexico:

{*252} This is in reply to your letter of May 3 concerning the right to trial by jury of a person being tried for breach of a Los Alamos County ordinance in the Justice Court.

The power of Los Alamos County to enact ordinances in the manner of municipalities was expressly granted by Sec. 1, Ch. 8 of the Laws of New Mexico of 1951. This section states:

"Counties of the sixth class shall have, in addition to the other powers granted by counties by law, those powers now or hereafter granted to cities with respect to which cities are or may be empowered to enact ordinances which are not inconsistent with the organization of sixth class counties or with statutory {*253} limitations placed upon counties."

It is my opinion that ordinances enacted by the Los Alamos Board of County Commissioners, as evidenced by the language of the foregoing statute, were intended by the Legislature to have the same status as ordinances enacted by any municipality of New Mexico.

Section 38-1203 NMSA 1941 Comp., states:

"In all trials before justices of the peace for offenses within their jurisdiction the defendant may demand a jury, which shall consist of six (6) jurors, to be summoned in the same manner as jurors in civil cases in justice courts, and said jury shall be empaneled and sworn, but nothing herein shall be held to authorize a jury in justice courts on preliminary examinations, **nor in prosecutions under municipal ordinances.**" (Emphasis supplied).

In the case of Gutierrez v. Gober, 43 N.M. 146, 87 P 2d 437, the Supreme Court of New Mexico upheld the constitutionality of the foregoing statute insofar as it precluded trial by jury as a matter of right in prosecutions for violation of municipal ordinances.

It is my opinion that insofar as the application of Sec. 38-1203 to prosecutions for violation of Los Alamos City Ordinances, those ordinances must be deemed to be municipal ordinances, and Sec. 38-1203 effectively eliminates the right to trial by jury.

In your letter you made specific inquiry about the jurisdiction of Los Alamos County Justice Courts to order revocation of drivers' licenses upon conviction of driving while

drunk. You inquire also as to the duty of the Drivers' License Division of the Bureau of Revenue to revoke licenses upon receiving evidence of such a conviction under a Los Alamos County ordinance.

The practical effect of the enactment of Chapter 8 of the Laws of 1951 was to give the Board of County Commissioners of sixth class counties the same power to adopt ordinances for the county as the boards of trustees or city councils have to adopt ordinances for their municipalities. Further the 1951 law gives to the justices of the peace of sixth class counties the same trial jurisdiction with respect to those ordinances as is held by the Police Magistrate of any municipality.

The Drivers' License Division of the Bureau of Revenue is required by the provisions of Sec. 68-317, NMSA 1941 Compilation, to . . . "revoke the license of any person upon receiving a record of the conviction of such person of any of the following crimes, whether such conviction be had under any state law or local ordinance: . . . 2. Driving a motor vehicle while under the influence of an intoxicating liquor or a narcotic drug . . ."

Los Alamos County ordinances are "local ordinances" within the meaning of Sec. 68-317. Upon a receipt of a record of conviction of one of the offenses listed in Sec. 68-317 in a Los Alamos County Justice Court, which court has specific jurisdiction for the trial of offenses against Los Alamos County ordinances, the Drivers' License division must act to revoke the driver's license of the person so convicted.

I trust that this will fully answer your inquiries.