

**Opinion No. 53-5828**

October 22, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. James P. Stapp City Attorney Roswell, New Mexico

{\*238} Receipt is acknowledged of your letter dated October 5, 1953 in which you request an opinion as follows:

"Is a traffic ordinance of a city prescribing as a penalty for its violation a fine or imprisonment, **or both**, authorized under enabling statutes of the State of New Mexico?"

Section 14-1847, N.M.S.A., 1941 Compilation, reads as follows:

"To pass all ordinances, rules, and make all regulations proper or necessary to carry into effect the powers granted to cities or towns, with such fines and penalties as the council or board of trustees shall deem proper: Provided, no fine or penalty shall exceed three hundred dollars (\$ 300), and no imprisonment shall exceed ninety (90) days for one (1) offense."

Section 14-2201 reads as follows:

"Municipal corporations shall have power to make and publish, from time to time, ordinances not inconsistent with the laws of the state, for carrying into effect or discharging the powers and duties conferred by law, and such as shall seem necessary and proper to provide for the safety, preserve the health, promote the prosperity, improve the morals, order, comfort and convenience of such corporation and the inhabitants thereof, and to enforce obedience to such ordinances by fines not exceeding three hundred dollars (\$ 300), or by imprisonment not exceeding ninety (90) days, by suit or prosecution before any justice of the peace within the limits of such city or town."

It is clear from the above quoted statutes that municipal corporations, specifically towns and cities, have the authority to enact ordinances for the regulation of traffic and to provide a penalty for their violation by either fine or imprisonment, or both, as {\*239} long as the penalty does not exceed \$ 300.00 and the imprisonment does not exceed 90 days.

Section 68-533, N.M.S.A., 1941 Comp., which provides that local authorities of municipalities shall have no power or authority, except as expressly authorized by sections 4 (c) (§ 68-504) and 21 § 68-521), to alter any speed limitations declared in this act or to enact or enforce any rule or regulation contrary to the provisions of this act etc., has been construed by the Supreme Court in the case of Mares v. Kool et al, 51 N.M. 36, 177 P. 2d 532, which held that a city ordinance may duplicate or complement

statutory regulations when authorized by the Legislature, and further held that the City of Albuquerque had authority under statute to enact an ordinance punishing motorists who operate vehicles on city streets while they are under the influence of liquor, notwithstanding that the Uniform Motor Vehicle Act punishes any one operating vehicle on a highway while he is under the influence of intoxicating liquor or a narcotic drug.

In Vol. 37 Am. Jur. on page 791, under the heading "Municipal Corporations", the second to the last paragraph of § 165, is found the following:

"A municipal ordinance is not in conflict with a statute authorizing its adoption because of a difference in penalties. Thus, further and additional penalties may be imposed by ordinance than are imposed by statute, without creating inconsistency, and, conversely, at least in some instances lesser penalties may be imposed by the ordinance for violation than by the statute without conflict."

In the case of *Evanston v. Wazau*, 106 A.L.R. 789, 364 Ill. 198, 4 N.E. 2d. 78, the defendant was convicted of violating a municipal ordinance for compulsory inspection of motor vehicles owned by residents of the municipality. In affirming the municipal court judgment and after denying a petition for rehearing, the court held that the ordinance was not in conflict with the statute of the State of Illinois because of a difference in penalties, and went on to say that the violation of a statute and the violation of an ordinance covering the same act are separate offences, separately punishable.

In 17 L.R.A., New Series, is found the following annotation on page 56 under the heading "Additional penalties":

"Municipalities are held to have the right, when so authorized, to impose new and additional penalties.

"So a city ordinance against selling liquor on Sunday, under a charter authorizing regulation of all persons vending liquor, was held valid, on the ground that the legislature might authorize the municipal government to impose new and additional penalties for acts already penal by the laws of the state. *State v. Ludwig*, 21 Minn. 202."

In the case of *State ex rel. Black v. Ditch Co.*, 25 N.M. 590, a case wherein the State of New Mexico on the relation of W. Goff Black brought a mandamus suit against the Aztec Ditch Company and others, judgment was rendered in the District Court for Relator, making the alternative writ peremptory and permanent. In affirming the case, the Supreme Court said:

"It is uniformly held that a by-law of a private corporation, or an ordinance adopted by a {\*240} municipal corporation, in order to be valid must be consistent with the law of the land, and a by-law or ordinance in contravention of a statute of the state is invalid."

In view of the language of the statutes hereinbefore quoted and the opinions of our Supreme Court and others, and from the general rules found in American

Jurisprudence, it is the opinion of this office that the City of Roswell has authority to enact a traffic ordinance and prescribe a penalty for a violation of same by including payment of fine or imprisonment, or both, as long as the penalties and the imprisonment do not exceed the sum of \$ 300.00 or 90 days in jail, or both, as provided in the Enabling Statutes herein quoted.

Trusting that this fully answers your inquiry, I remain

By: Hilario Rubio

Assist. Attorney General