

Opinion No. 53-5860

December 4, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Ray Bell Law Enforcement Officer Department of Game and Fish Santa Fe, New Mexico

{*283} You have requested our opinion as to the fines which Justices of the Peace may impose in cases of violation of the Game Laws, and as to whether or not a defendant, may, by cash payment, secure his release from jail under a jail sentence imposed by Justices of the Peace.

While in ordinary cases Justice of the Peace jurisdiction is limited to situations in which the maximum fine is \$ 100.00, the Fish and Game Laws constitute an exception to this. Section 43-207 of the 1941 Compilation, reads as follows:

"Unless and except as permitted by regulations made as in this act provided, or as otherwise allowed by law, it shall be unlawful:

(a) To hunt, take, capture, kill, or to attempt to take, capture, or kill, at any time or in any manner, any game animal, game bird, or game fish in the State of New Mexico.

(b) To possess, offer for sale, sell, offer to purchase or purchase in the State of New Mexico all or any part of any game animal, game bird, or game fish, taken, captured or killed in said state.

Violation of any of the provisions of this section shall constitute a misdemeanor, and any person convicted of violating any of the provisions hereof shall be punished as provided in Section 7 (§ 43-209) of this Act. (Laws 1931, Ch. 117, § 8, p. 206.)"

The penalty for its violation is set forth in Section 43-209 of the 1941 Compilation, which reads as follows:

"Any person who shall violate or fail to comply with regulations adopted and promulgated by the state game commission, pursuant to the provisions of this act, or any other act, or who shall violate any of the provisions of any act relating to game or fish, now or hereafter in force, shall, upon conviction, be fined not less than twenty-five (\$ 25.00) dollars nor more than three hundred (\$ 300.00) dollars, or imprisoned not less than one (1) day nor more than ninety (90) days, or both such fine and imprisonment, in the discretion of any court. All moneys collected as fines from violations of any penal statute relating to fish or game, or violations of any of the regulations of the state game commission, shall be immediately paid over by the justice of the peace or other officer collecting or receiving the same, to the state treasurer, to be by him credited to the current school fund of the state, and upon the conviction of any one for such violations

of said statutes or regulation, there shall be taxed as costs in each case the sum of twenty-five (\$ 25.00) dollars which sum when collected shall be paid over to the person or persons instituting the prosecution as witness fees. (Laws 1931, Ch. 117, § 7, p. 206.)"

You will note that this Section provides for a maximum fine of \$ 300.00 and imprisonment for a maximum of 90 days.

Your attention is further called to Section 43-208 of the 1941 Compilation, which provides:

"Justices of the Peace are hereby given jurisdiction in all cases arising under this chapter."

{*284} It is our view that the last quoted section clearly gives a Justice of the Peace the authority to fine up to \$ 300.00 in any case which is brought under the provisions of Chapter 117, Laws 1931, which includes illegal hunting, fishing or possession or sale of game animals, game birds or game fish. The same situation applies to actions brought for violation of Section 43-303, relating to false statements relative to residence, hunting without a license or using a license issued to another person, and to actions brought under Section 43-235 making spot lighting illegal.

With respect to the second matter, it is our opinion that Justices of the Peace have no authority to release a person from jail except after he has served the sentence imposed upon him, except in cases where the defendant is a minor or where the criminal case involves domestic difficulties in which cases **only**, a Justice of the Peace is authorized to give a suspended sentence. With respect to the specific problems, it is not possible for an imprisoned person to secure his release from jail by paying \$ 1.00 a day or any other sum in lieu of the time which he was sentenced to serve. Such a payment is sufficient to release only on imprisonment for failure to pay fine or costs.

By: Walter R. Kegel

Assist. Attorney General