

Opinion No. 54-5895

January 22, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. L. D. Wilson Administrative Engineer State Highway Department State Capitol Building Santa Fe, New Mexico

{*332} You have requested our opinion as to the existence of any penal provision for the enforcement of the Weight and Width Law, being Sections 68-601 through Section 68-603, N.M.S.A., 1941. As you state, the penal provision enacted at the time of the original enactment of the Weight Law as Section 59, Chapter 75, Session Laws of 1929, set forth as 68-901, N.M.S.A., 1941, was apparently repealed by the enactment of Chapter 139, Session Laws of 1953.

Section 68-601, N.M.S.A., 1941, of the Weight and Width Law, which made its violation a misdemeanor, however, was not repealed, and Section 51-106, N.M.S.A., 1941, would seem to be applicable. We quote this section:

"41-106. Crimes other than felonies -- Punishment when not otherwise prescribed.
-- When a criminal is found guilty in any of the courts of this state of any crime which is not a felony, for which no punishment has been prescribed by law, the said criminal shall be punished by a fine not exceeding two hundred dollars (\$ 200) or by imprisonment in the county jail for a period not exceeding three (3) months, or both at the discretion of the court. (Laws 1871-1872, Ch. 31, § 2; C.L. 1884, § 681; C.L. 1897, § 1055; Code 1915, § 1455; C.S. 1929, § 35-106.)"

In our opinion prosecutions for violations of the Weight and Width Law can be maintained and the fines and imprisonment therein described imposed by virtue of the statute above quoted.

By: Spec. Assist. Atty. Gen.