

## Opinion No. 57-78

April 23, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,  
Assistant Attorney General

**TO:** Honorable Dan Sosa, Jr., District Attorney, Third Judicial District, County Court  
House, Las Cruces, New Mexico

### QUESTIONS

#### QUESTIONS

May the incorporated Village of Greentree, which has a population of less than five hundred persons, appoint a police judge (magistrate) in addition to the duly elected justice of the peace?

#### CONCLUSION

No.

### OPINION

#### ANALYSIS

The New Mexico Constitution provides at Article VI, § 1, that:

"The judicial power of the state shall be vested in the senate when sitting as a court of impeachment, a supreme court, district courts, probate courts, justices of the peace, and such courts inferior to the district courts as may be established by law from time to time in any county or municipality of the state, including juvenile courts."

No other constitutional provisions are found whereby are created jurisdictions differing from those afore specified. In keeping, however, with the authority stated for the establishing, by law, of courts inferior to the district courts, § 37-1-1, N.M.S.A., 1953 Compilation, provides as follows:

"There is hereby created and established a police magistrate court in **all incorporated cities and** towns, which court shall be presided over by a police magistrate, to be known as a 'public judge.'" (Emphasis supplied.)

The jurisdiction for such courts, as found in § 31-1-2, N.M.S.A., 1953 Compilation, and is stated as being,

". . . to the same extent and with like effect as now exercised in such cities and towns by justices of the peace, acting as police judges."

The instant situation draws forth the question of a village having authority to appoint a police judge under the provisions cited supra. In accordance with the provisions found in §§ 14-4-1 and 2, N.M.S.A., 1953 Compilation, a specified area having not less than one hundred and fifty people may petition the Board of County Commissioners for incorporation. Upon filing of such petition and the subsequent taking of a census, running a survey and holding an election, as provided in § 14-4-3, N.M.S.A., 1953 Compilation, an approved certificate will be granted. Villages incorporated in conformity with the foregoing are authorized, along with other powers, to enact and enforce ordinances for security and welfare of the community, §§ 14-16-8 and 14-23-1 to 10, N.M.S.A., 1953 Compilation. And, specifically, § 14-23-8, N.M.S.A., 1953 Compilation, provides:

"The **Justice of the peace** of the precinct wherein any incorporated village is situated shall have jurisdiction of all violations of ordinances made and published by the board of trustees under the provisions of this article." (Emphasis supplied.)

Under Article 23 of Chapter 14, no suggestion or contemplation is found for the creation of a police magistrate court, separate and in addition to that provided for the precinct justice of the peace.

It has been argued that the provisions of Chapter 37 creating police magistrate courts, do, in fact, exist by sanction of the constitutional grant stated in Article VI, § 26 supra, and that such creatures of the legislature extends to all cities, towns and villages. Such reasoning cannot be followed here. Section 37-1-1, supra, specifies police courts in cities and towns. Classification of cities and towns is found in § 14-1-1, and differs distinctively from that contemplated in § 14-4-2, supra, both in area as well as population.

Further argument was considered in **Stout vs. City of Clovis**, 37 N.M. 30, to the effect that the apparent limitation imposed by the legislative language rendered the same unconstitutional in view of establishing police magistrate courts by Article VI, § 26, supra. Denying this theory, the Court said:

"We do not regard the language of Const. § 26, Art. 6, as 'establishing' the officers of 'justice of the peace, police magistrates and constables,' but merely as defining the manner of their selection. Section 1 of Article 6 had already reposed judicial power in justices of the peace, but not in police magistrates. We find no act of the Legislature establishing courts to be known as police courts independently of justices of the peace, . . ."

It is thus our opinion that incorporated villages may not create a police magistrate court separate and in addition to that presided over by the duly elected justice of the peace in

whose precinct the village lies. Nothing herein shall be considered as overruling or inconsistent with Attorney General's Opinions Nos. 4013, 4084, 6326 and 6452.