

Opinion No. 58-118

June 9, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Joel B. Burr, Jr., Assistant Attorney General

TO: Mr. Paul W. Robinson District Attorney Second Judicial District, Albuquerque, New Mexico

QUESTION

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Can the City of Albuquerque by ordinance provide for a second police judge?

CONCLUSION

No.

OPINION

ANALYSIS

The judicial power of the State is set out in Article VI, § 1 of the State Constitution. That section provides as follows:

"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.**" (Emphasis ours).

The above cited provision of the Constitution, to the extent that it is authority for the creation of police courts, was interpreted by our Supreme Court in the case of Stout v. City of Clovis, 37 N.M. 30, 16 P. 2d 936 (1932). In that case the City of Clovis, operating under the commission manager plan, had by ordinance attempted to create the office of police judge, provide for the election thereof, and confer jurisdiction thereon to decide cases involving violations of city ordinances. Our Court held that the office of police judge had not been created by the constitutional provision quoted above, nor any laws then existing. The Court further stated that the Legislature by virtue of Article VI, § 1 of the State Constitution had been delegated the power to create by statute inferior courts such as that of police court, but had not chosen to exercise that power. And further, that the power vested in the Legislature could not be redelegated by it to the various municipalities.

The Legislature in 1939 saw fit to exercise the power which the Supreme Court in *Stout v. City of Clovis*, supra, said it possessed, and provided for the creation of a police magistrate court in all incorporated cities and towns. The act in question is compiled as §§ 37-1-1 through 37-1-9, N.M.S.A., 1953 Compilation. Section 37-1-1, supra, 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 'Police Judge.'"

There then follows other sections defining the jurisdictional powers of the court, the qualifications of its judges, their method of election and term of office, and miscellaneous provisions not germane to a determination of the question before us.

This office, after a careful reading of Article VI, § 1 of the State Constitution, the act in question, the case of *Stout v. City of Clovis*, supra, and cases in other jurisdictions involving the constitutionality of statutes creating similar tribunals, is of the opinion that the City of Albuquerque is without authority to provide for a second police judge.

That the office of police judge in the various municipalities of this State is a creature of statute, and as such enjoys its existence at the pleasure of the Legislature may not be seriously questioned. *Klipsch v. Indiana Alcoholic Beverage Commission*, 215 Ind. 616, 21 N.E. 2d 701; *Underwood v. Isham*, 61 Ohio App. 129, 22 N.E. 2d 468; *Spurgeon v. Worley*, 169 Tenn. 697, 90 S.W. 2d 948. That the power of the Legislature to create courts inferior to the district courts delegated to it by the Constitution cannot be redelegated to the governing body of a municipality is well settled in this State. See *Stout v. City of Clovis*, supra, at page 34. Inasmuch as the Legislature has the exclusive power to create courts inferior to the district courts, it must therefore follow that it has the exclusive power to define their jurisdiction, the number of judges, method of election, term of office, etc.

We must therefore turn to the act creating the police magistrate courts to determine whether the Legislature has spoken in this regard. Section 37-1-2, supra, defines the jurisdiction of the court. Section 37-1-3, supra, sets out the qualifications, bond and salary of its judges. Section 37-1-4, supra, provides for their election, term of office and how vacancies may be filled. At no place in the Act has the Legislature provided for the election or appointment of additional judges in any one municipality. At no place in the Act are we told when additional judges in a municipality are to be added, or who is to make the determination of when they are needed. Indeed, this office is not prepared to read these provisions into the present act.

In arriving at this conclusion, we are not unmindful of the serious problem which the City of Albuquerque faces in the administration of justice. We are aware of the fact that the volume of cases has become such that many cases are not heard for two or three months. However, this is a problem that must be corrected by the Legislature, and not this office.