

Opinion No. 58-188

September 15, 1958

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

TO: Honorable Luis E. Armijo, District Judge, Las Vegas, New Mexico

QUESTION

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Are the District Courts allowed the same discretion in sentencing under the so-called Indeterminate Sentence Act of 1955 as had been permitted under the 1909 Law?

CONCLUSION

No.

OPINION

ANALYSIS

In giving consideration to the inquiry stated it is felt that Attorney General Opinion No. 6292, September 27, 1955, fully points up the changes brought about by Chapter 150, Laws 1955. Mr. Campos wrote in that opinion that:

"Prior to the 1953 amendment to § 41-17-1, this section had been construed by our Supreme Court to invest the District Courts with the discretion to impose sentences with minimums and maximums different than those prescribed by the penalty sections of the statutes defining particular crimes, so long as the minimum and maximum imposed were within the limits prescribed in each statute. For example, where the penalty prescribed for a particular crime was one to three years, the Court, under § 41-17-1, before amendment, could sentence for a period of from one to two years, two to three years, or even not less than three nor more than three years, or any other combination between one and three years. State v. Davisson, 28 N.M. 653, 217 P. 240.

The change wrought by the 1955 amendment, as this office views it, makes it mandatory that the Court sentence for the period provided for in the penalty provision of the particular statute, that is, the minimum must be the minimum prescribed and no other and the maximum must be the maximum prescribed and no other. In other words the discretion of the sentencing courts was taken away from them."

In State v. Armstrong, 61 N.M. 258, 298 P. 2d 941, cited in your letter, the Supreme Court said with regard to the present law that:

"Prior to trial and sentence, however, Chapter 150, Laws 1955, commonly known as our Indeterminate Sentence Act, was passed which removed the discretionary powers of the trial judges to fix minimum or maximum sentences, and required the court to sentence the person for the term as prescribed by law for the particular crime of which he was convicted."

Accordingly, it is our opinion that Attorney General Opinion No. 6292, *supra*, is correct and we fully concur therewith at the present time.