

Opinion No. 58-217

October 30, 1958

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

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

QUESTION

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May the Town of Grants impose a jail sentence alone, or a fine and a jail sentence for the violation of a city ordinance?

CONCLUSION

Yes.

OPINION

ANALYSIS

The following re-statement of the law in regard to the violation and enforcement of municipal ordinances found in 37 Am. Jur., Municipal Corporations, Section 199, is, in our opinion, dispositive of your question. It reads in part as follows:

"Generally. -- A grant of the police power to a municipal corporation necessarily includes the right to carry it into effect, and empowers the municipality to use proper means to enforce its ordinances, subject, of course, to judicial review as to reasonableness. Hence, the view has been taken in some of the authorities that irrespective of express statutory authorization, a municipality has implied power to provide for the enforcement of its ordinances by the imposition of reasonable and proper fines or penalties. Also, if authorized so to do, the municipality may provide by ordinance that the offender may be committed to prison for a limited period, either in the first instance or on default of payment for such penalty . . ."

See also *O'Haver vs. Montgomery*, 120 Tenn. 448, 111 S.W. 448, wherein the Tennessee Court held that the power to imprison for violation of an ordinance or for failure to pay a fine assessed for violation of an ordinance must be expressly conferred by the Legislature.

It is thus clear that even under the more strict rule, a municipality may provide for a fine, or imprisonment, or both for the violation of one of its city ordinances if such power is

conferred upon it by statute. In this regard your attention is called to Section 14-25-1, N.M.S.A., 1953 Compilation, which contains the following language:

"Municipal corporations shall have power to make and publish, from time to time, ordinances not inconsistent with the laws of the state, for carrying into effect or discharging the powers and duties conferred by law, and such as shall seem necessary and proper to provide for the safety, preserve the health, promote the prosperity, improve the morals, order, comfort and convenience of such corporation and the inhabitants thereof, and to enforce obedience of such ordinances by fines not exceeding three hundred dollars (\$ 300), or by imprisonment not exceeding ninety (90) days, by suit or prosecution before any justice of the peace within the limits of such city or town."

In view of the above statutory grant of power, we conclude that the Town of Grants may impose a jail sentence alone, or a fine and a jail sentence for the violation of one of its ordinances subject to the limitations imposed in Section 14-25-1, supra.