

## Opinion No. 59-154

September 30, 1959

**BY:** HILTON A. DICKSON, JR., Attorney General

**TO:** Mr. Julius C. Sanchez Assistant District Attorney Seventh Judicial District Socorro, New Mexico

{\*240} This is in response to your recent request for an opinion on the following question:

"Under the law of New Mexico, as it now stands, is there any penalty provision applicable to a violation of the speeding law (§ 64-18-1.1, N.M.S.A., 1953 Comp., p.s.)?"

It is our opinion that § 40-1-7, N.M.S.A., 1953 Compilation, provides the penalty for the violation of the offenses created by Chapter 73, Laws of 1957.

Section 40-1-7 reads as follows:

"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." (Emphasis supplied).

A crime is a public offense, and all public offenses are expressly defined to be crimes in New Mexico. (§ 40-1-2, § 40-1-3 and § 40-1-4).

A "public offense" is the same as a "crime", **Territory v. West**, 36 P. 207. A public offense may include a breach of the laws established for the protection of the public, as distinguished from an infringement of mere private rights, **State v. Cantieny**, 24 N.W. 458. It is an act committed or omitted in violation of public law, {\*241} **Ford v. State**, 35 N.E. 34 (Ind.). See also 22 C.J.S. § 1, p. 52.

Any offense against the public good and the first principles of justice and common honesty is a crime. "A crime . . . is more accurately defined as a wrong directly or indirectly affecting the public . . .". **State v. Thomas**, (Mo.) 300 S.W. 823.

There is no need to cite authority that the control and supervision of the operation of motor vehicles on the public highways is a matter with which the public and the state are vitally concerned. We need only to look at the death toll statistics and the larger numbers of victims who are seriously injured on our highways in order to be forcefully struck with this fact.

A criminal statute, to be valid, must contain sufficiently definite warning as to the proscribed conduct as to permit a person of common understanding to determine what acts he must or must not do. Section 64-18-1.1 meets more than the minimal requirements for definiteness. In language unambiguous and unmistakable, it sets out the interdicted conduct. No person of reasonable understanding could, in this day and age, contend that this law does not inform him of the acts which are specifically prohibited therein. A violation of this section of our law is an offense against the public health and safety and is therefore a "public offense".

Since it is a public offense and does not meet the definition of a felony, it is a misdemeanor under the statutory definition contained in § 40-1-4.

It has been stated that every criminal statute must have a penalty but this does not mean that the penalty must be included in every section of every statute prohibiting certain conduct on the part of the citizens of the state. Nor is it necessary that the individual section declare that a violation is a misdemeanor or felony. In **State v. Di Paglia**, 71 N.W. 2d 601, it was held that the legislature could define offenses by a particular description of the act or acts constituting it, and added:

"It is not essential that any criminal statute shall declare in terms that its violation shall constitute a misdemeanor felony."

The speeding law sets out conduct which is prohibited. It declares that **no person shall** do the forbidden acts. To violate this clear prohibition constitutes a public offense, or crime, punishable under § 40-1-7.

The separation of the crime from the punishment in the statutes is valid and constitutional. As was stated in **United States v. Wyman, et al.**, 125 F. Supp. 276:

"No fortifying authorities are necessary to sustain the proposition that in criminal procedure one statute may prescribe a duty and another statute make it a criminal offense for failure to perform that duty."

The New Mexico Supreme Court, in **State v. Thompson**, 57 N.M. 459, 260 P. 2d 370, held:

"The crime and punishment can be separated and distinguished by the legislature. One statute may create an offense, and another provide for its punishment."

It is the opinion of this office that a violation of the speeding laws, being Chapter 73, Laws of 1957, is a public offense, and a crime, and that the penalty therefore is provided in § 40-1-7, N.M.S.A., 1953 Compilation.

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