

## Opinion No. 60-148

August 10, 1960

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

**TO:** Mr. Joe M. Clark, Superintendent State Park Commission P. O. Box 958 Santa Fe, New Mexico

### QUESTION

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Do justice of the peace courts have jurisdiction over offenses punishable under § 22-C, Ch. 338, Laws 1959?

#### CONCLUSION

No.

### OPINION

#### {\*532} ANALYSIS

Section 22-C, Ch. 338, Laws 1959 reads as follows:

"C. Any person who violates any provision of Section 10 of the Boat Act shall be guilty of a misdemeanor and shall be subject to a fine of not to exceed three hundred dollars (\$ 300) or imprisonment for a period not to exceed six (6) months, or both for each violation."

Section 36-2-5, N.M.S.A., 1953 Comp., bestows jurisdiction upon justice of the peace courts as follows:

"Justices of the peace are hereby given jurisdiction in all cases of misdemeanors where the punishment prescribed by law may be a fine of one hundred dollars (\$ 100) or less, or imprisonment for six (6) months or less, or may be both such fine and imprisonment. Provided, that this act shall not apply to misdemeanors, jurisdiction whereof is exclusively vested in district courts."

At the outset, it should be noted that a violation of § 22-C is not such a misdemeanor as would vest jurisdiction solely in district courts. It will be noted further that this is not a misdemeanor of a specific class or type which the legislature has specifically granted jurisdiction over to the justice of the peace courts, so the rationale of **City of Clovis v. Dendy**, 35 N.M. 347, 297 P. 141 does not apply.

From reading the above quoted sections, it appears that the fine portion of the misdemeanor exceeds a justice of the peace court's jurisdiction while the imprisonment portion of the penalty comes within the jurisdictional limits of such a court. We are, therefore, faced squarely with the question of whether a justice of the peace has jurisdiction over a misdemeanor which carries a penalty, part of which exceeds the jurisdiction of a justice of the peace while part does not.

This office rendered an opinion on this point in 1920 holding that a justice of the peace court had jurisdiction over the misdemeanor in such cases and could impose that portion of the penalty which did not exceed its jurisdiction. Opinion of the Attorney General dated February 25, 1920, found at page 126 of the 1919-1920 Reports of the Attorney General. With due deference to the learned author of that opinion, we do not feel that such is the state of the law today.

We have made an exhaustive search of the cases arising in other states -- there being none on this point in New Mexico -- and have found only one case which is precisely the same on its facts as the case herein presented. In **Jucker v. Records Court of Irvington**, 133 N.J.L. 12, 42 Atl. 2d. 269, the New Jersey court had this exact problem before it. There was filed in a Records Court -- a court of limited jurisdiction as are our justice of peace courts -- a criminal complaint charging the defendant with violation of a misdemeanor which carried a penalty of a fine from fifty dollars (\$ 50) to two hundred fifty dollars. (\$ 250) or imprisonment not to exceed ninety (90) days or both. The statutory limitation of Records Courts on misdemeanors is where the penalty does not exceed a fine of one hundred dollars (\$ 100) or imprisonment not to exceed six (6) months or both. In that case as here, the penalty fine exceeded the statutory jurisdiction but the imprisonment portion of the penalty did not. The New Jersey Court held that the section which granted jurisdiction over misdemeanors to Records Courts was a limitation on jurisdiction and not an enlargement and therefore, if the limitation was exceeded in either fine or penalty, that court did not have jurisdiction. We are impressed with the reasoning applied by that court and feel that if our Supreme Court were called {\*533} upon to decide this point, it would follow a similar analysis.

If we were to hold otherwise, a justice of the peace could not impose the full penalty assigned to a crime by the legislature when he felt the circumstances justified such imposition. Such a result, we feel, would vitiate the express will of the legislature in this respect. We will not be found making a decision having that result.

We are of the opinion that if the penalty for a misdemeanor set by the legislature prescribes a fine or imprisonment or both and either the fine or penalty exceeds the statutory jurisdictional limits of justice of the peace courts, these courts are without jurisdiction to try such a violation. This does not disturb the jurisdiction of misdemeanors specifically granted to justice of the peace courts by the legislature. We are of the opinion, therefore, that a justice of the peace does not have jurisdiction over a misdemeanor punishable under § 22-C, Ch. 338, Laws 1959.

We expressly overrule Opinion of the Attorney General dated February 25, 1920, found at page 126 of the 1919-1920 Reports of the Attorney General.

By: Boston E. Witt

Assistant Attorney General