

Opinion No. 61-03

January 5, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Norman S. Thayer, Assistant Attorney General

TO: Honorable Oscar H. Beasley, State Representative, 411 First National Bank, Building, Albuquerque, New Mexico

QUESTION

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1. Can a village marshal of an incorporated village issue a uniform traffic citation for a violation of the state motor vehicle laws occurring within the corporate limits of the village?
2. Can a village marshal issue a uniform traffic citation for a violation of a village traffic ordinance?
3. Must an incorporated village have an ordinance prescribing a penalty for failure to obey a uniform traffic citation, or does the state penalty apply?
4. Does § 14-17-6, N.M.S.A., 1953 Compilation, empower a village to issue a warrant for the arrest of a person who fails to obey a uniform traffic citation, if the person is beyond the corporate limits of the village but within the county?

CONCLUSIONS

1. Yes.
2. Yes.
3. See analysis.
4. Yes.

OPINION

ANALYSIS

§ 64-22-8, N.M.S.A., 1953 Comp., is the governing provision on the question of when a uniform traffic citation should be issued, but it does not specify who may issue the citation, other than mentioning the "arresting officer". § 64-22-11, N.M.S.A., 1953 Comp., provides:

"The division shall prepare a uniform traffic citation containing notice to appear and meeting the requirements of this article (64-22-5 to 64-22-16) and **shall furnish sample copies thereof to every traffic-enforcement agency in this state. Every such agency shall provide itself with uniform traffic citations prescribed herein, which shall be issued in books with citations in quadruplicate.**"

We think it is only reasonable to say that, if a traffic enforcement agency is required to provide itself with uniform traffic citations, then that traffic enforcement agency is authorized to issue the citations. Village marshals have the power to arrest persons for violations of state laws. See § 14-17-6, N.M.S.A., 1953 Compilation. If it can be shown that village marshals constitute a "traffic enforcement agency", we think they are authorized to issue uniform traffic citations for violations of state motor vehicle laws.

§ 14-16-6, N.M.S.A., 1953 Comp., authorizes villages to appoint marshals, and § 14-17-6, supra, gives these marshals power to arrest for violations of state laws or any village ordinance. § 14-16-14, N.M.S.A., 1953 Comp., authorizes villages to appoint deputy marshals, and describes their duties thusly:

"The board of trustees of any incorporated town or village may appoint a **deputy marshal who shall have the same powers and be charged with the same duties as are now enjoined upon the marshal. In addition thereto, he may act as night watchman, or as traffic policeman**, or perform such other duties as the board of trustees may direct."

We think that since village marshals and their deputies are given power to enforce all village ordinances, and to arrest for violations of state laws, then such officers are within the term "traffic enforcement agency", and may issue uniform traffic citations for violations of state motor vehicle laws.

Your second question points up some confusing and seemingly contradictory language in the state motor vehicle laws, § 64-22-8, N.M.S.A., 1953 Comp., provides that uniform traffic citations shall be issued for violations of "this act", which can only refer to the state law. But we feel that in the light of subsequent provisions the issuance of uniform traffic citations is not limited to violations of state laws. To begin with, § 64-22-11, supra, requires every traffic enforcement agency in the state to provide itself with books of uniform traffic citations. Then, in subsection (d) of § 64-22-12, N.M.S.A., 1953 Comp., we find this provision:

"The chief administrative officer of **every traffic enforcement agency** shall require the return to him of a copy of every traffic citation issued by an officer under his supervision to an alleged violator of **any traffic law or ordinance** and of all copies of every traffic citation which has been spoiled or upon which any entry has been made and not issued to an alleged violator."

We think this section contemplates the issuance of uniform traffic citations for the violation of any traffic law or ordinance, including village traffic ordinances, which

villages have the power to adopt under the provisions of § 14-23-1, N.M.S.A., 1953 Compilation.

Therefore, it is our opinion that a village marshal can issue a uniform traffic citation for a violation of a village traffic ordinance.

In answer to your third question, we turn first to § 64-22-9, N.M.S.A., 1953 Comp., which makes failure to obey a uniform traffic citation unlawful:

"It shall be unlawful for any person to violate his written promise to appear given to an officer upon the issuance of a traffic citation regardless of the disposition of the charge for which such citation was originally issued."

Then, in § 64-22-4, N.M.S.A., 1953 Comp., we find:

"It is a misdemeanor for any person to violate any of the provisions of this act unless such violation is by this act or other law of this state declared to be a felony."

Failure to appear in answer to a uniform traffic citation is, thus, a violation of "this act", or a violation of state law, and state law provides the penalty for that violation. If the uniform traffic citation is issued for a violation of state law, your question does not arise, for the citation will direct the person arrested to appear in a court having jurisdiction over state offenses, and that court will have jurisdiction to enforce the state penalty for failure to appear. Your question does arise if the uniform traffic citation is issued for a violation of a village ordinance, and the person arrested is directed to appear before a court having jurisdiction to hear cases of violations of such ordinances. Does that court have power to enforce the state penalty for failure to appear?

§ 14-23-8, N.M.S.A., 1953 Comp., provides:

"The justice of the peace of the precinct wherein any incorporated village is situated shall have jurisdiction of all violations of ordinances made and published by the board of trustees under the provisions of this article."

Justices of the peace already have jurisdiction to hear cases of violations of state law, including motor vehicle laws, if the prescribed penalties are within the jurisdictional limits of the justice court. Thus, if a person fails to obey a uniform traffic citation, a complaint may be lodged against him in the Justice of the Peace court for a violation of state law, and there is no need for the village in question to adopt its own ordinance prescribing a penalty for such an offense. We think this is true even though the uniform traffic citation is issued for a violation of a village ordinance. The illegal act is the failure to obey the citation, whether the citation is issued for a violation of state law or for violation of a village ordinance.

This is not to say that a village has no power to adopt an ordinance prescribing a penalty for failure to obey a uniform traffic citation issued for a violation of a village

ordinance. § 64-22-10, N.M.S.A., 1953 Comp., specifically preserves the power to prescribe other methods for the arrest and prosecution of persons for offenses of a grade equal to offenses defined in the state motor vehicle laws:

"The foregoing provisions of this article (64-22-5 to 64-22-16) shall govern all police officers in making arrests without a warrant for violations of this act, but **the procedure prescribed herein shall not otherwise be exclusive of any other method prescribed by law for the arrest and prosecution of a person for an offense of like grade.**"

Thus, while an incorporated village, if it sees fit, can adopt an ordinance punishing failure to obey a uniform traffic citation issued for a violation of a village ordinance, it need not do so for the reason that the court empowered to hear cases of violations of village ordinances is also empowered to hear cases of violations of state law, and that court can enforce the state penalty for failure to obey a uniform traffic citation, including a uniform traffic citation issued for a violation of a village traffic ordinance.

In answer to your fourth question, we refer to § 14-17-6, N.M.S.A., 1953 Comp., which provides:

"The marshal and other peace officers or officers of cities, towns, and villages, shall execute and return all writs and processes to them directed by the Mayor, Police Judge or Justice of the Peace as the case may be, and in criminal cases or cases in violation of city ordinances they may serve the same in **any part of the county where such municipality is situated**; they shall suppress all riots, disturbances, and breaches of the peace, apprehend all disorderly persons in the cities, towns, and villages, and shall pursue and arrest any person fleeing from justice in any part of the state; they shall apprehend any person in the act of committing any offense against the laws of the state or ordinances of the city, town or village, and forthwith bring such persons before the competent authority for examination and trial; they shall have in the discharge of their proper duties like powers, and be subject to like responsibilities, as sheriffs or constables in similar cases."

This statute clearly grants village marshals the power to execute warrants of arrest anywhere within the county in which the village is located, and we answer your fourth question in the affirmative.