

## Opinion No. 62-141

November 15, 1962

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

**TO:** Mr. Raymond Keithly, District Attorney, Truth or Consequences, N.M.

### QUESTION

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Is it permissible for a municipal judge to hear cases involving violations arising under the State Motor Vehicle Laws of New Mexico in instances wherein the town ordinance does not cover the violation but the state law does?

#### CONCLUSION

No. See Analysis.

### OPINION

#### ANALYSIS

The answer to your question posed herein is governed by the express provisions of Section 37-1-2, N.M.S.A., 1953 Compilation, as amended. This section provides in full as follows:

**"JURISDICTION. -- Each municipal court has jurisdiction over all offenses and complaints under ordinances of the municipality** and may issue subpoenas and warrants and punish for contempt." (Emphasis added)

As specified under Section 37-1-2 supra, a municipal judge is limited in the exercise of his jurisdiction to those offenses arising out of violations or alleged violations of municipal ordinances. In addition, jurisdiction of municipal judges extends only to offenses perpetrated within the limits of the particular municipality.

Under Section 37-1-5, N.M.S.A., (1953 Compilation (P.S.)), it is provided that a justice of the peace may be appointed to the office of municipal judge "during the temporary incapacity or absence of any municipal judge." In such cases, the justice of the peace, while serving in the capacity as temporary municipal judge, is limited to the hearing and determination of "cases arising under municipal ordinances while sitting as municipal judge."

Under the provisions of Section 14-25-8, N.M.S.A., 1953 Compilation (P.S.), legislative authorization is given to incorporated cities, towns and villages to adopt by ordinance a traffic code, based upon the State traffic laws, if not in conflict with any statute of the State or a valid regulation issued by a State agency or board. Such statute contemplates that the town may adopt the municipal traffic code by reference to the proper title and date of the state traffic code alone. Under our prior Attorney General's Opinion No. 62-218, dated December 8, 1962, we held that "if an incorporated municipality wishes to adopt as an ordinance all parts of Chapter 64 of New Mexico Statutes that deal with the subject of traffic, we are of the opinion that they may do so merely by reference to the proper title and date of the State code on the same subject."

Therefore, as set out above, unless the town has specifically enacted an ordinance inclusive of the motor vehicle offenses contained in the State Traffic Code, a municipal judge does not have jurisdiction to hear and try those traffic offenses contained in the state motor vehicle code which are not actually covered by the particular town ordinance.