

Opinion No. 64-14

February 12, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Frank Bachicha, Jr., Assistant Attorney General

TO: Honorable Alton Gray, Justice of the Peace, Lincoln County, Precinct 10 Ruidoso Downs, New Mexico

QUESTION

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1. Do Justices of the Peace have jurisdiction to try cases arising out of violations of the Plumbing Administrative Act (Sections 67-22-1 to 67-22-24, N.M.S.A., 1953 Compilation)?
2. May Guaranteed Arrest Bond Certificates be accepted as payment of fines and costs in criminal actions?

CONCLUSIONS

1. No.
2. No.

OPINION

ANALYSIS

The penalty provision of the Plumbing Administrative Act is contained in Section 67-22-21, *supra*, which reads as follows:

"Any person, firm, partnership or corporation who violates any provision of this act (67-22-21 to 67-22-24), or who violates any order of the board issued in conformity to the provisions of this act, or who shall fail or refuse to comply with the provisions of this act, or any part thereof, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined **not less than twenty-five (\$ 25.00) dollars, nor more than two hundred (\$ 200.00) dollars, or by imprisonment not to exceed sixty (60) days or by both such fine and imprisonment.**" (Emphasis supplied).

And, Justices of the Peace are given jurisdiction over certain misdemeanors by Section 36-2-5, N.M.S.A., 1953 Compilation (P.S.) which reads as follows:

"Justices of the peace have jurisdiction in all cases of misdemeanors where the punishment prescribed by law is a fine **of one hundred dollars (\$ 100) or less, or imprisonment for six (6) months or less, or where fine or imprisonment or both are prescribed but neither exceeds these maximums.** This section does not apply to misdemeanors where jurisdiction is exclusively vested in district courts." (Emphasis supplied).

As can readily be seen from a reading of the above, the "punishment prescribed" by Section 67-22-21, supra, exceeds the maximum amount specified in Section 36-2-5, supra. In order for a justice of the peace to legally assume jurisdiction over a misdemeanor, it is not sufficient that the amount of fine or imprisonment or both which is actually imposed in a given case be within the maximum; rather, it is the "punishment prescribed by law" which is controlling. Prior Attorney General Opinions 60-148 and 60-188, dated August 10, 1960 and October 11, 1960 respectively, treated problems concerning jurisdiction of justices of the peace closely allied to the instant one. We recommend that these be read in conjunction with this opinion and are enclosing one copy of each herewith. Also, see **Griffith v. State**, 68 N.M. 359, 362 P.2d 513.

Therefore, we are of the opinion as to your first question that justices of the peace do not have jurisdiction to try cases arising out of a violation of the Plumbing Administrative Act.

In reply to your second question above, please be advised that the law applicable to the use of Guaranteed Arrest Bond Certificates is contained in Section 41-4-11.1, N.M.S.A., 1953 Compilation (P.S.) which reads as follows:

"Use of guaranteed arrest bond certificate in lieu of cash bail. -- **Any guaranteed arrest bond certificate with** respect to which a surety company has become surety, as provided in Section 1 (28-1-10) hereof, **shall**, when posted by the person whose signature appears thereon, **be accepted in lieu of cash bail in an amount not to exceed two hundred dollars (\$ 200.00), as a bail bond, to guarantee the appearance of such person in any court**, including municipal courts, **in this state**, at such time as may be required by the court, when such person is arrested for violation of any motor vehicle law of this state or ordinance of any municipality in this state (except for the offense of driving while intoxicated or for any felony) committed prior to the date of expiration shown on such guaranteed arrest bond certificates; Provided, that any such guaranteed arrest bond certificate so posted as a bail bond in any court in this state shall be subject to the forfeiture and enforcement provisions with respect to bail bonds posted in criminal cases as provided by law, and that any such guaranteed arrest bond certificate posted as a bail bond in any municipal court in this state shall be subject to the forfeiture and enforcement provisions of the chapter or ordinance of the particular municipality pertaining to bail bonds posted." (Emphasis supplied).

Please note the portion of the foregoing statute which we have underlined. This expressly states that the Guaranteed Arrest Bond Certificates are to be used "in lieu of cash bail . . . to guarantee the appearance . . . in court." No provision exists which would

give justices of the peace authority to accept these certificates in payment of fines or costs which have been imposed upon a defendant. However, this opinion should not be construed to mean that a defendant may not post an appeal bond in lieu of paying the fine.

We trust that the foregoing properly answers your inquiry.