

Opinion No. 69-22

March 19, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Ray Shollenbarger,
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TO: Mr. James G. Huber, Assistant District Attorney, Third Judicial District, County
Court House, Alamogordo, New Mexico

QUESTIONS

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Do magistrates have jurisdiction to try offenses arising out of Section 64-22-17
N.M.S.A., 1953 Compilation dealing with the possession of alcoholic liquor by a minor
while operating a motor vehicle?

CONCLUSION

No.

OPINION

{*32} ANALYSIS

Section 64-22-17, supra, provides:

"No person under the age of twenty-one (21) shall operate a motor vehicle upon a
public highway in this state while knowingly and unlawfully having in his possession any
alcoholic liquor.

Two penalty provisions are applicable depending upon the age of the minor. If the minor
is under the age of 18, Section 64-22-18 is applicable. This section provides:

"Any person under the age of {*33} eighteen (18) years of age who violates section 1
(64-22-17) of this act (64-22-17 to 64-22-20) shall be charged as a juvenile offender."

Section 13-8-26, N.M.S.A., 1953 Compilation grants original and exclusive jurisdiction to
the juvenile offenders and Section 13-8-19, N.M.S.A., 1953 Compilation provides that a
separate juvenile court is to be established in each judicial district and Section 13-8-20,
N.M.S.A., 1953 Compilation requires the judge of the juvenile court to be a district court
judge. Clearly if the minor is under the age of 18 a magistrate would not have
jurisdiction.

If the minor is over the age of 18, but less than 21, Section 64-22-19, N.M.S.A., 1953 Compilation is the applicable penalty section. This section provides:

"Upon determination that a minor has violated the provisions of this act, the judge trying the case shall suspend the minor's driver's license for a period of not less than one day but for not more than any period of time which runs past the twenty-first birthday of such minor.

While this section does not classify the degree of crime involved, Section 64-10-7, N.M.S.A., 1953 Compilation does set forth the degree. Section 64-10-7, supra, provides in part:

"It is a misdemeanor for any person to violate any provision of the Motor Vehicle Code unless the violation is declared to be a felony."

Since a violation of Section 64-22-17, supra, is not declared to be a felony, it is a misdemeanor.

The question is then whether magistrates have jurisdiction over an offense declared to be a misdemeanor. Section 36-3-4, N.M.S.A., 1953 Compilation sets forth the criminal jurisdiction of magistrates. It provides in part:

"Magistrates 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 months or less, or where fine or imprisonment or both are prescribed but neither exceeds these maximums. Magistrates also have jurisdiction in any other criminal action where jurisdiction is specifically granted by law . . ."

This section clearly limits the jurisdiction of the magistrate to misdemeanors where the punishment prescribed is a fine up to a certain amount or where imprisonment is up to a certain period or both or to those misdemeanors where jurisdiction is specifically conferred by law.

Since the penalty provided for under Section 64-22-19, supra, is other than a fine or imprisonment and there is no specific grant of jurisdiction of the magistrates over the offense involved they do not have jurisdiction.