

Opinion No. 69-91

August 5, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Gary O'Dowd, Deputy Attorney General

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QUESTIONS

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1. May a Magistrate, after the imposition of fine and jail sentence, alter, change or suspend the fine or the jail sentence after he has issued a jail commitment to the County Sheriff?
2. Would the answer be the same if the defendant were less than 21 years of age?

CONCLUSIONS

1. No.
2. Yes.

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{*144} ANALYSIS

Both of these questions will be answered together. The jurisdiction of a magistrate's court is set forth in Sections 36-3-1 to 36-3-9, N.M.S.A., 1953 Compilation, as enacted by Chapter 62, Sections 46 through 54, New Mexico Laws 1968. Section 36-1-38, N.M.S.A., 1953 Compilation, (Chapter 62, Section 40, New Mexico Laws 1968), reads as follows:

"36-1-38. MAGISTRATE COURT JUSTICES OF THE PEACE ABOLISHED
__TRANSFER.__The office of justice of the peace is abolished. All jurisdiction, power and duties conferred by law upon justices of the peace are transferred to the magistrate court. Whenever the term 'justice of the peace' may be used in the laws, it shall be construed to refer to the magistrate court."

From this latter section, it appears that the jurisdiction and powers of a magistrate's court are governed by the laws relating to justices of the peace except as they have been later changed. Consequently, recourse must be had to decisions in New Mexico courts setting forth the powers of justices of the peace which now apply equally to

magistrates. In **Bell v. Beck**, 43 N.M. 315, 316, 92 P.2d 992 (1939), our Supreme Court said:

"The jurisdiction of a justice of the peace is special and limited and must be proved, and should be included in the findings of the court."

In **State v. Bolton**, 53 N.M. 256, 258, 206 P.2d 258 (1949) the Supreme Court of New Mexico said:

"In this state a justice of the peace is without power to set aside his judgment or grant a new trial. *Pickering v. Palmer*, 18 N.M. 473, 138 P. 198, 50 L.R.A., N.S. 1055."

Since a magistrate has no power to grant a new trial, he has no power to alter, change or suspend either the fine or a jail sentence after he has issued a jail commitment to the county sheriff. The answer is the same if the defendant were less than 21 years of age, provided he were not a juvenile under 18 years of age. Magistrate courts have no jurisdiction over juveniles under 18 years of age. A magistrate does have power to correct purely clerical mistakes under Rule 34 of Rules For Magistrate Courts promulgated by the Supreme Court of New Mexico.