

Opinion No. 31-82

March 10, 1931

BY: Frank H. Patton, Assistant Attorney General

TO: Mr. W. L. Freeman, Mayor, Texico, New Mexico.

{*50} This is in reply to your letter of March 5, 1931. You inquire as to the procedure for selection of another police judge, the Justice of Peace who was appointed, having refused to act.

I would call to your attention Section 90-910 of the 1929 Code which reads as follows:

"90-910. Any and all justices of the peace shall have jurisdiction in all prosecutions and suits for the recovery of fines arising under the provisions of this chapter, or any ordinance passed in pursuance thereof, or the City Council **may designate** one justice of the peace, who shall have such jurisdiction exclusively."

In view of this statute it would seem that the justice of the peace you mention has all the powers and duties of a police judge whether the council designates him as such or not. In other words, if the council takes no action whatever, he would be a police judge. The council may designate one justice of the peace as police judge and if it does so, the one so designated has exclusive jurisdiction. This is not in the nature of an appointment, and in my opinion, he would have no right to resign as police judge without also resigning as justice of the peace.

In this case, the council may designate some other justice of the peace as police judge, it may let the designation it has made stand, or it may make no designation at all.

By Quincy D. Adams,

Asst. Att'y General