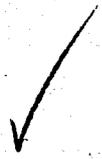


Yes
Done
4/27/51



April 24, 1951

Op. No. 51-117

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Mr. V. M. Eskridge
City Magistrate
City of Tempe
Tempe, Arizona

Dear Mr. Eskridge:

We have your letter of March 28, in which you ask for an opinion from this office upon the following question:

Does the Police Court of the City of Tempe have jurisdiction over violations of Section 53 and 54(d) of the Uniform Act regulating traffic on the highways?

The duties of this office, as prescribed by statute, require us to render opinions to legislators, state officials and county attorneys. It is not within the function of this office to advise any other public official or person. The proper person for you to consult concerning this matter is your city attorney. We will, however, with this explanation in mind, endeavor to answer your question as an accomodation to you.

The pertinent parts of the Uniform Act are:

Section 173.1

"Jurisdiction of Courts. Every police court established by or within any incorporated city or town, within their jurisdiction, shall have concurrent jurisdiction over all violations of this Act. All fees, fines and for-

feitures collected by the police courts in the exercise of such concurrent jurisdiction shall be retained by and inure to the benefit of the city or town wherein the said police court is situated. Whenever under this Act any incorporated city or town exercises its jurisdiction and sentences an offender to confinement, said imprisonment may be in the city or county jail." (Emphasis supplied)

Section 53

"Negligent Homicide. (a) When the death of any person ensues within 1 year as a proximate result of injury received by the driving of any vehicle in reckless disregard of the safety of others, the person so operating such vehicle shall be guilty of negligent homicide.

(b) Any person convicted of negligent homicide shall be punished by imprisonment for not more than 1 year in the county jail or by fine of not less than \$100.00 nor more than \$1,000.00, or by both such fine and imprisonment."

Section 54(d)

"Persons Under the influence of Intoxicating Liquor or Drugs.

* * * * *

(d) * * * On a second or subsequent conviction he shall be punished by imprisonment for not less than 90 days nor more than 1 year in the county jail, and in the discretion of the court, a fine of not more than \$1,000.00. * * * "

In the sections just quoted, the wording appears to be broad enough to give police courts jurisdiction in cases of negligent homicide and where persons have been convicted of driving under the influence of intoxicating liquor for the second time unless the underlined portion of Section

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173.1 or some other statutory provision limits the police court's jurisdiction.

The jurisdiction of police courts is set forth in Section 16-1101 ACA 1939, as amended. This section provides:

"Establishment--Jurisdiction.--In each city or town incorporated under the general laws of this state, there shall be a police court. Said court, and every police court established by or within a city incorporated under the provisions of article 3 of this chapter, or incorporated under the provisions of any special act or charter, shall have jurisdiction of all cases arising under the ordinances of the city or town, and shall have concurrent jurisdiction with justices of the peace in the precincts where said city or town is established, over all violations of the laws of the state committed within the limits of said city or town." (Emphasis supplied)

It is our belief that the underlined portion of this section limits the jurisdiction of police courts in all violations of the laws of the state committed within the limits of said city or town to that jurisdiction the Justice of the Peace has over the same violations. The jurisdiction of Justices of the Peace is established by Article 6, Section 9, of the Constitution of Arizona and more particularly set forth in Section 20-102 ACA 1939. The pertinent part of this section provides:

"Jurisdiction.--Justices of the peace have such jurisdiction only as may be affirmatively conferred on them by law. They have jurisdiction * * * in criminal cases, other than felonies, where the punishment is a fine not exceeding three hundred dollars (\$300), or imprisonment in the county jail not exceeding six (6) months, or both. * * *"

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You will note that the jurisdiction of Justices of the Peace, as limited in the section just quoted, would not extend to Section 53 or 54(d) since the punishment may be as much as one year in the county jail and a fine of \$1,000.00 or both.

Therefore, it is our opinion that inasmuch as a Justice of the Peace does not have jurisdiction to try the cases asked about in your letter and the jurisdiction of the Justices of Peace and police courts are synonymous concerning the enforcement of the laws of the state committed within the limits of a city or town, we believe that the Police Court of the City of Tempe does not have jurisdiction to try cases falling under Section 53 or the quoted part of Section 54(d) of the Uniform Traffic Act.

Very truly yours,

FRED O. WILSON
Attorney General

KENT A. BLAKE
Assistant Attorney General

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