

Opinion No. 51-5349

April 2, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Abner Schreiber Assistant District Attorney Los Alamos County Los Alamos, New Mexico

{*28} This is in reply to your letter of February 23, 1951, in which you request an opinion as to whether or not under House Committee Substitute for Bill No. 37, which carried the emergency clause, the County of Los Alamos may prepare and adopt ordinances.

I have checked the several statutes which you cited in your letter as well as Article 12, Section 4 of the New Mexico State Constitution. House Committee Substitute for House Bill No. 37 grants to counties of the sixth class certain powers of municipalities and empowers said counties of the sixth class to enact ordinances with respect thereto and prescribes the mode of enactment, publication and enforcement of sixth class county ordinances. This statute permits all sixth class counties, including Los Alamos, to prepare and pass these ordinances provided they are not contrary to state law. It is my belief that this Committee Substitute for House Bill No. 37 does not give Los Alamos County the power to pass any ordinance changing the procedure or manner of disposing of, in any other manner except as provided by law, fines collected by the Justice of Peace or to establish the Traffic Violations Bureau which you propose because the State Constitution, by Article 12, Section 4, provides that all fines and forfeitures, collected under general laws shall go into the current school fund of the state. The justice of {*29} Peace, after collecting these fines and making quarterly reports to the Board of County Commissioners, shall turn this money over to the County Treasurer, who will then turn it over to the State Treasurer. I doubt seriously whether under this Committee Substitute for House Bill No. 37 that you could have these Justices of Peace fines paid over to the County Treasurer to be credited to the general fund of the county, when the Constitution specifically provides that these funds are for the general school fund. Certainly the State Treasurer would challenge this and then we would have to represent the State Treasurer, he being a state officer. The procedure for disposing of fines collected by municipalities is entirely different from that of counties.

It is, therefore, my opinion that Section 42-2101, New Mexico 1941 Compilation, which has not been amended, and Article 12, Section 4 of the New Mexico State Constitution is the statute and constitutional provision which Los Alamos County will have to follow in disposing of Justice of Peace fines.