

OPINION  
47-167

April 11, 1947 (OPINION)

JUSTICE OF THE PEACE

RE: Jurisdiction of Criminal Cases

This is in reply to your letter of April 9 addressed to the Attorney General.

With reference to the jurisdiction of a justice of peace in criminal matters, Section 33-0108 of the North Dakota Revised Code of 1943 provides that, "In each county where no county court with criminal jurisdiction exists, each justice court has jurisdiction and authority coextensive with the county to hear, try and determine every criminal action in which the offense charged is punishable by a fine of not more than one hundred dollars, or by imprisonment in the county jail for a period of not more than thirty days, or by both such fine and imprisonment, and every other criminal action in which jurisdiction is conferred by law."

Section 39-0801 prescribes the punishment for driving a vehicle upon a highway in this state while under the influence of intoxicating liquor as follows: "Any person violating any provision of this section shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment."

It will thus be seen that the justice of peace has no jurisdiction to try and determine an offense of this kind, but only can bind the defendant over to the next term of District Court.

A justice of peace has jurisdiction, however, to try and punish for the crime of being intoxicated in a public place since the penalty in such case is a fine of not less than five dollars nor more than fifty dollars and imprisonment in the county jail for not more than thirty days or by both such fine and imprisonment.

NELS G. JOHNSON

Attorney General