

**Motor Vehicles, Ordinance Regulating Use and Control of.
Ordinance, Regulating and Controlling Use of Motor Vehicles.
County Attorney, Duty of. Duty of County Attorney, With
Respect to Motor Vehicles. Motor Vehicles, Speed of. Police
Courts, Jurisdiction of. Jurisdiction, of Police Courts.**

Under the provisions of Chap. 72, Session Laws of 1913, police courts and their officers have concurrent jurisdiction with justice courts in cases of misdemeanor. A violation of the above act being a violation of a State law, the duty of prosecuting devolves upon the county attorney.

Under the provisions of the above act the power of cities and towns to pass ordinances regulating the use and control of motor vehicles is annulled, the Legislature having taken from the cities and towns the power to legislate in regard to motor vehicles upon their streets, therefore they can pass no ordinance or rule regulating the speed of motor vehicles within their corporate limits.

June 5th, 1913.

Hon. Justin M. Smith,
County Attorney,
Bozeman, Montana.

Dear Sir:

I beg to acknowledge receipt of your communication of May 1st 1913, asking my opinion:

"1. As to the powers of police courts to hear cases arising under Chapter 73 of the Session Laws of the Thirteenth Legislative Assembly.

"2. Whether towns and cities have any power or authority to pass ordinances regulating the use and control of motor vehicles within their corporate limits.

"3. Whether the office of county attorney is charged with the sole responsibility of enforcing the provisions of this act."

Aside from the provisions of Subdiv. 8 of Sec. 10 of this law, which provides in part as follows:

"In case any person shall be taken into custody because of any violation of any of the provisions of this act, he shall forthwith be taken before any magistrate, or any justice of

the peace in any city or village or county, or before any accessible captain, sergeant of police, or acting captain or sergeant of police, who shall have the powers of magistrate or justice of the peace in carrying out the provisions of this act, and be entitled to an immediate hearing."

I am of the opinion that police courts and their officers have the power of enforcing the provisions of the act that is, that violations of it are within their jurisdiction.

Running an automobile at such speed as would endanger life, limb or property is forbidden by Sec. 7 of the act, and the doing of such an act would be a crime as defined by Sec. 8107 of the Revised Codes:

"A crime or public offense is an act committed in violation of the law forbidding or commanding it, and to which is annexed upon conviction thereof, either of the following punishments."

Sec. 8109 defines misdemeanors as every other crime beside a felony.

Sec. 24 of Art. VIII of the Constitution of Montana is as follows:

"The Legislative Assembly shall have power to provide for creating such police and municipal courts and magistrates for cities and towns as may be deemed necessary from time to time, who shall have jurisdiction in all cases arising under the ordinances of such cities and towns, respectively; such police magistrates may also be constituted ex-officio justices of the peace for their respective counties."

Under the power herein granted the Legislature may confer and has conferred concurrent jurisdiction with justice courts upon police courts in cases of misdemeanor.

Sec. 3290: "A police court is established in each city or town, which court must always be open, except upon non-judicial days, and upon such days it may transact criminal business only."

Sec. 3297: "A police court has concurrent jurisdiction with the justice of the peace of the following public offenses committed within the county (Subdiv. 3): Breaches of the peace, riots, affrays, committing any wilful injury to property, and all misdemeanors punishable by fine not exceeding five hundred dollars or by imprisonment not exceeding six months or by both such fine and imprisonment."

Sec. 8924 defines peace officers:

"A peace officer is a sheriff of a county or his deputy, or a constable, marshal or policeman of a township, city or town."

Sec. 9057 gives the authority of peace officers in making arrests:

"A peace officer may make an arrest in obedience to a warrant delivered to him, or may, without a warrant, arrest a person—(1) for a public offense committed or attempted in his presence."

From the above quoted portions of the code, it will be seen that the doing of the act forbidden by Sec. 7 of Chap. 73 of the Session Laws of the Thirteenth Legislative Assembly is a misdemeanor, and that as such the police courts or magistrates of any city or town have a concurrent jurisdiction with justice of the peace courts in the hearing thereof, and upon the complaint of any person would be charged with the duty of issuing a warrant and taking the ordinary proceedings in misdemeanor cases.

As to the power of a city attorney to prosecute under the act, we must examine Sec. 2355 of the Revised Codes, which is as follows:

"It is the duty of the city attorney (1) to attend before the police court and other courts, and prosecute in behalf of the city, and to attend all suits, matters and things in which the city may be legally interested.

Since a violation of this law is not the violation of a city ordinance but of a state law, the result is that prosecutions must be brought by state officers, and therefore a city attorney as such would not have authority to prosecute under the law, and that duty would devolve upon the county attorney. The functions of a city attorney as prosecutor in criminal matters is limited to offenses which are violations of town or city ordinances.

The question of the power of cities or towns to pass an ordinance in any way regulating the use or control of motor vehicles within the limits thereof, seems to be effectually annulled and abrogated by the terms of this law. The general principle is well recognized that the highways of the commonwealth, whether urban or rural, belong primarily to the public, and that the absolute dominion over them is lodged in the Legislature. It is true that the control of streets is commonly delegated to municipalities in which they are located in such measure as the Legislature sees fit to bestow. Nevertheless, the usage of them remains in the public at large subject only to such limitations as the municipalities are authorized by law to impose. The power to bestow authority implies the power to take it away, and since the Legislature has seen fit to take from cities the power to legislate in regard to the use of motor vehicles upon their streets, it is my opinion that they can pass no ordinance or rule regulating the speed of motor vehicles within their corporate limits.

Yours very truly,

D. M. KELLY,
Attorney General.