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Office of the Attorney General
State of Mississippi

Opinion No. 2001-0305
August 10, 2001

Honorable **◀John Shirley▶**
Rankin County Justice Court Judge
Post Office Box 5426
Pearl, Mississippi 39288-5426

Re: Misdemeanor Violations and Penalties

Dear Judge Shirley:

Attorney General Mike Moore has received your letter of request and has assigned it to me for research and reply. Your letter asks:

1. House Bill 134 amends Section 97-3-7 to provide that simple assault upon certain individuals (i.e., law enforcement, certain judges, etc.) shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment for not more than five (5) years, or both. Wouldn't a violation of this particular provision of Section 97-3-7 be a felony since the maximum penalty exceeds one year? If it is a misdemeanor, would a Justice Court Judge or a Municipal Court Judge be allowed to sentence a defendant convicted of that crime to a sentence of five (5) years?
2. When reviewing a criminal statute that provides for penalties, what criteria should be used to determine if the crime is a felony or a misdemeanor?
3. What is the maximum jail time that a Justice Court Judge can impose for a crime (recognizing, of course, that the Judge shall not exceed the amount of time provided by the particular penalty provision of the statute that the defendant violated)?
4. What is the maximum jail time that a Municipal Court Judge can impose for a crime (recognizing, of course, that the Judge shall not exceed the amount of time provided by the particular penalty provision of the statute that the defendant violated)?

In response to your first two questions, a copy of House Bill 134, which amends Section 97-3-7, is attached. A violation of Section 97-3-7 (1), wherein the offense committed is simple assault upon a certain individual, i.e. law enforcement officer, judges, etc., carries a penalty of a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment for not more than five (5) years, or both. The statute does not state where the time must be served, i.e., the penitentiary or the county jail.

[Mississippi Code Annotated Section 1-3-11](#) defines felony and provides:

The term "felony," when used in any statute, shall mean any violation of law punished with death or confinement in the penitentiary.

Criminal jurisdiction of Justice Courts is limited to crimes punishable by fine and imprisonment "in the county jail". [Mississippi Code Annotated Section 99-33-1](#) and [Const. Section 171](#). The term misdemeanor is not defined by the Mississippi Code, however, [Rule 6.01 of the Uniform Circuit and County Court Rules](#) provides for the definition of a misdemeanor and states:

Rule Series 6 through 12 are applicable only to criminal proceedings. For the purpose of these rules a misdemeanor is defined as a criminal offense punishable by a maximum possible sentence of confinement for one year or less, fine, or both.

The definition of misdemeanor in [Rule 6.01](#) is limited for purposes of the Uniform Circuit and County Court Rules, but it does provide some guidance as to what the Supreme Court considers a misdemeanor. There is no clear indication that a violation of Section 97-3-7(1) would be a felony since the statute does not specifically provide that a violation would be punished by death or confinement in the penitentiary.

Nevertheless, it is the opinion of this office that where the statute provides for incarceration of over one year but does not expressly state that such time is to be served "in the county jail", as is the case with Section 97-3-7(1),

such crime is felony. Therefore, justice and municipal courts would not have jurisdiction to try such cases. In response to your third question, there is no limitation to the amount of time in the county jail a justice court judge may impose on a defendant convicted of a misdemeanor other than what is provided by the particular criminal statute that was violated.

In response to your final question, [Mississippi Code Annotated Section 21- 13-19](#) limits the penalty that may be imposed by a municipal court and provides:

All offenses under the penal laws of this state which are misdemeanors, together with the penalty provided for violation thereof, are hereby made, without further action of the municipal authorities, criminal offenses against the municipality in whose corporate limits the offenses may have been committed to the same effect as though such offenses were made offenses against the municipality by separate ordinance in each case. However, for such misdemeanor, any penalty of incarceration is hereby limited to no more than six (6) months in jail, and any fine is hereby limited to a maximum of one thousand dollars (\$1,000.00) for each such violation in any case tried without a jury. Judgments for fines, costs, forfeitures and other penalties imposed by municipal courts may be enrolled by filing a certified copy of the record with the clerk of any circuit court and execution may be had thereon as provided by law for other judgments.

Therefore, the maximum time a municipal judge may sentence a defendant for a misdemeanor violation would be six (6) months in jail even if the statute provided for a possible longer sentence. If we may be of further service to you, let us know.

Very truly yours,

Mike Moore
Attorney General

By: David K. Scott
Special Assistant Attorney General
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