

August 22, 1951.

HON. ALFRED C. CLAPP,
Senator, Essex County,
744 Broad Street,
Newark 2, New Jersey.

FORMAL OPINION—1951. No. 26.

DEAR SENATOR CLAPP:

In the absence of Attorney General Parsons from the State, your letter of August 7, 1951, as Chairman of the Advisory Committee on Revision of the Statutes, has been referred to me for answer.

Your letter requests an opinion on the "constitutionality of the proposal to downgrade various offenses in our Crimes Act, which are now classified as misdemeanors, to the rank of disorderly persons offenses."

In view of the fact that your question does not confine itself to any particular offense, but is general in nature, I will attempt to answer it in an over-all manner.

Basically, the question is controlled by paragraphs 8 and 9 of Article I of the Constitution of 1947. Paragraph 8 provides that "No person shall be held to answer for a criminal offense, unless on the presentment or indictment of a grand jury * * *." Paragraph 9 provides that "The right of trial by jury shall remain inviolate * * *."

The Legislature has, from time to time, defined certain offenses against the State as misdemeanors and others as disorderly conduct and it has provided the method and manner for their punishment. Generally speaking, a person accused of a misdemeanor has the right to a trial by jury after a presentment or indictment by a grand jury and a person accused of disorderly conduct can be tried in a summary manner.

A reclassification of certain offenses presently defined in the Crimes Act as misdemeanors to that of disorderly conduct will change the method of punishment for those offenses from that of a trial by jury after a presentment or indictment by a grand jury to that of a summary proceeding.

Whether or not a person accused of an offense can be punished in a summary manner as a disorderly person will depend on the nature of the offense.

It has been said that all offenses which were triable by a jury after indictment at the time of the adoption of the Constitution of 1947 were clothed with the guarantees contained in paragraphs 8 and 9 of Article I.

Fortunately, the effect of these two paragraphs of the 1947 Constitution were discussed at length by Mr. Justice Case in the recent case of *Montclair vs. Stancyevich* reported in 6 N. J. 479. This case held that only those offenses which were indictable at common law or those offenses for which an accused would have a right to a trial by jury at common law were included in the aforementioned guarantees.

I am therefore of the opinion that offenses classified as misdemeanors in the Crimes Act, which were not indictable at common law or those for which an accused would have a right to a trial by jury at common law, can be changed by the Legislature to disorderly persons offenses.

Very truly yours,

OLIVER T. SOMERVILLE,
Deputy Attorney General.

OTS:mcb