

## Opinion No. 47-5074

September 3, 1947

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. W. T. Scoggin, Jr. District Attorney Las Cruces, New Mexico

{\*85} This will acknowledge receipt of your letter of August 27, 1947 in which you state that private individuals have, for the purpose of publication, tried to get the justices of the peace to give them the information on a complaint filed by the District Attorney's office and the Sheriff's office before the accused has been arrested. Your question is whether such records are public records and subject to inspection in accordance with the provisions of Chapter 130, Laws of 1947.

Section 1 of Chapter 130, Laws of 1947, provides that every citizen of this state shall have the right to inspect any public records of this state with the exception of certain records not involved herein. Sec. 2 of Chapter 130, Laws of 1947, provides that officers having custody of any state, county, school, city or town records in this state shall furnish opportunities for inspection etc. Sec. 3 of Chapter 130, Laws of 1947 prescribes penalties for those officers who refuse the right to inspect.

Justice of the peace courts are not courts of record. Further, our Supreme Court has held that the office of justice of the peace is a {\*86} precinct office. (Territory ex rel Welter vs. Witt, 16 N.M. 355, 117 P. 860.)

In 14 Am. Jur. 354, Sec. 148, the following statement appears reference to this matter:

"Sec. 148. **Publicity of Judicial Records.** After a public trial or hearing and a final determination of a cause entered upon the journal of the court, no one would probably question the right of any person to inspect that record and publish the result. Such record has undoubtedly then become a public one. In this country courts are open to the public. **This publicity, however, does not extend to or include the papers filed in the case necessary to frame the issue to be tried or to the entries thereof made by the clerk. Such papers are usually filed and the entries made, out of court. They are not proceedings in open court;** and it has therefore been held that the parties to a suit may, under direction of the court, lawfully withhold the records and papers in the case and prevent any statement in regard thereto being published, until they are made public by the consent of the parties or by proceedings in open court." (Emphasis ours)

In the case of Schmedding vs. May, 85 Mich. 1, 24 Am. St. Rep. 74, the Supreme Court of Michigan held that mandamus would not lie in favor of a person, not a party to an action, to compel the submission for examination of the records and papers in a case, for the purpose of publishing statements in regard thereto in a newspaper before trial or hearing, or before they become public by proceedings in open court.

In the case of Cowley vs. Pulsifer, 137 Mass. 392, 50 Am. Rep. 318, the Supreme Court of Massachusetts held that county records which are open for public inspection and of which any person may take copies, means **the records and files of the county, and not of the courts of the commonwealth within the county.**

I have made an exhaustive study of the cases bearing upon this question and among the various reasons advanced by the courts in their refusal to allow inspection of judicial records of the type now under consideration, two are primarily pertinent here. They are (1) That the statute is not broad enough to cover "court records" and (2) that the documents, of the type now under consideration in this opinion, were not filed in open court, have not become public records, and that premature publication thereof would impede justice. The above reasons advanced generally by the courts are applicable here.

In view of the case law on the subject, and in view of the particular language of Chapter 130, Laws of 1947, I am of the opinion that a complaint filed in the Justice of the Peace Court by the District Attorney's office and the Sheriff's office, before the man has been arrested, is not a public record and therefore not subject to inspection by persons not immediately interested in the case.

By: WILLIAM R. FEDERICI

Asst. Atty. General