

Opinion No. 52-5584

September 4, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Richard H. Robinson Assistant District Attorney Fifth Judicial District Carlsbad, New Mexico

{*291} This is in reply to your letter of August 4, 1952, in which you request an opinion as to whether or not a Justice of the Peace is entitled to have a stenographer present at any type of criminal hearing, whether it is a misdemeanor or preliminary hearing for a felony or an inquest before a coroner's jury. Section 38-1901, N.M.S.A., 1941 Compilation on page 101 of Volume 3 specifically provides that a Justice of the Peace is authorized to employ a stenographer to take down the evidence at any inquisition and in felony cases.

It says nothing about having the authority to employ a stenographer to take such evidence in a misdemeanor case. It is therefore my opinion that under Section 38-1901, N.M.S.A., 1941 Compilation, a Justice {*292} of the Peace has authority to employ a stenographer only for inquests and felony cases.

There is a cross reference under Section 38-1901, N.M.S.A., 1941 Compilation in which reference is made to Section 42-311 which deals with the payment of the stenographer's compensation. This latter section specifically provides that after the certificate under the seal of the Justice of the Peace is prepared for payment said certificate has to be endorsed and certified to by the District Attorney before it is paid.

There is no question that under Section 42-310 and 42-311 the District Attorney is also given authority to employ a stenographer in all inquests and felony cases, but nothing is said about the District Attorney having authority to employ a stenographer in misdemeanor cases.

It is the general practice in most of the counties of the State for the District Attorney to exercise his discretion in employing stenographers to take the evidence at inquests and felony cases for the reason that the District Attorney knows whether he needs to preserve the evidence for future use. The District Attorney is best able to know whether the taking of testimony is necessary.

Trusting that this fully answers your inquiry, I remain