

Opinion No. 60-10

January 21, 1960

BY: OPINION of HILTON A DICKSON, JR., Attorney General

TO: Senator Fabian Chavez, Jr., Chairman State Judicial System Study Committee
Santa Fe, New Mexico

QUESTION

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1. May a justice of the peace elected or appointed from a county precinct hold a preliminary hearing or a trial of a criminal case at a location within the corporate limits of a city within the same county?
2. May a justice of the peace maintain his permanent office and courtroom in a place located outside of the boundaries of the precinct from which he was elected or appointed?

CONCLUSIONS

1. No.
2. No, unless the precinct in which the justice was elected lies wholly or partially within the corporate limits of a city or town having a population in excess of two thousand inhabitants.

OPINION

{*350} ANALYSIS

Section 36-2-8, N.M.S.A., 1953 Compilation sets up the territorial jurisdiction of a justice of the peace. That section provides that the jurisdiction of the justice shall be coextensive with the limits of the county in which they shall be elected. It further provides, however, that he shall reside and **hold his office in the precinct for which he may be elected**. An exception is made where the justice's precinct lies wholly or partially within the corporate limits of a city or town having a population of more than two thousand inhabitants as shown by the last United States census. In such case, the justice of the peace may hold his office anywhere within the corporate limits of the city he may desire. This part of the statute has been construed in a previous opinion of the Attorney General issued July 2, 1958 and numbered 58-144. That opinion is included for your perusal. We do not, however, agree with the dicta contained in the last paragraph of the opinion, No. 58-144, and that paragraph is overruled by this opinion.

Section 36-2-9 provides generally that no justice of the peace shall try any cause nor hold his court out of his respective precinct and provides that to do so shall constitute a misdemeanor.

Territory v. Witt, 16 N.M. 335, held that the justice of the peace is a precinct officer as opposed to a county officer. It was stated in that case on page 339 that:

". . . a justice of the peace can perform his official acts only in his own precinct. His court, as a court, has no existence outside of the limits of his own precinct. It necessarily follows, therefore, that justices of the peace in this territory must be considered as precinct, and not county officers, within the terms of section 5, of the Act of June 20th, 1910."

The best analysis of the position of justice of the peace under a statute which provides that the jurisdiction is coextensive with the county, but limits the justice to his own precinct insofar as residence and holding court is concerned, is the case of **Newbill v. Hendricks**, 115 Utah 388, 205 P. 2d 247. Sections 20-5-1, UCA 1943 and 105-57-1 UCA 1943, of the Utah statutes provide almost identical requirements concerning jurisdiction, residence and place of holding court, as do our own statutes {351} on the subject. In the recent opinion, above, the Utah Supreme Court held that the statutes do not permit a justice of the peace to hold court outside of the precinct from which he was elected and that county-wide jurisdiction is not a sanction for the justice to operate as a circuit judge within the county. It was pointed out that the county-wide jurisdiction enables the justice to hear a criminal offense when the crime has been committed anywhere within the county. If the crime occurs outside the precinct where the justice holds his court, the complaint must be brought to the court before the justice has jurisdiction in his own court. In other words you can bring the offender to the court but you cannot take the court to the offender. The court may not be moved about from precinct to precinct because it is not portable. When a justice goes into another precinct under the exceptions permitted by our statutes, he should go only for the purpose of presiding over the precinct court which has already been established in that precinct. He does not take his court with him when he goes.

The above analysis, to all intents and purposes, answers question No. 2, unless the precinct in which the justice is elected lies wholly or partially within the corporate limits of a town or city having a population in excess of two thousand inhabitants. Under these certain circumstances, according to Section 36-2-8, N.M.S.A., 1953 Compilation, a justice can reside and hold his court anywhere within the corporate limits of the city or town. However, if the precinct is located outside the boundaries of such a city or town, he may not maintain a permanent office or courtroom at any place outside his precinct and to do so constitutes a misdemeanor punishable under Section 36-2-9, N.M.S.A., 1953 Compilation.

It has been held that to hold a court in a geographical location prohibited by law divests the court of jurisdiction and the proceedings become **coram non judice**, **Manufacturing Co., v. Holt**, 51 W. Va. 352, 41 S.E. 351 and are a nullity.

By: B. J. Baggett

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