

## **Opinion No. 61-05**

January 9, 1961

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Norman S. Thayer, Assistant Attorney General

**TO:** Honorable George D. Amaya, 214 West Hill, Gallup, New Mexico

### **QUESTION**

#### QUESTIONS

1. Can public funds be expended to pay claims before those claims have been approved by the public board to which the claims are submitted?
2. May police magistrate courts and justice of the peace courts legally be opened on Sundays and legal holidays to try misdemeanor cases and impose fines in such cases?
3. Can police magistrate judges and justices of the peace hold court in other than their specified offices within their respective precincts?

#### CONCLUSIONS

1. No.
2. See analysis.
3. See analysis.

### **OPINION**

#### ANALYSIS

The answer to your first question is found in § 11-2-70, N.M.S.A., 1953 Compilation, which reads:

"All vouchers used by state agencies or local public bodies, including public schools, shall be in the form and contain the information designated by the director of the department of finance and administration. All payments of moneys to any claimant for moneys due for purchases or for services rendered and properly chargeable against and due from public funds shall be made on vouchers as so formulated and prescribed. Such vouchers shall be designed so as to clearly show the items purchased or the services rendered. In case of purchases the original bill of the claimant must be attached to such voucher, and in case reimbursement is claimed by any public official or employee the voucher pertaining thereto must have receipts attached for all money

claimed. **All such vouchers, before payment is made thereon, must have the approval in writing of the governing authority of the public agency or body to which the claim pertains thereon,** and it must be duly signed and sworn to by the applicant." (Emphasis supplied)

In our opinion, this statute clearly requires the prior approval of the public board or agency charged with expenditure of the public funds before a claim against those funds can be paid, and it is illegal to pay a claim against public funds before such approval is obtained.

In answer to your second question, it was held in the case of **Pickering v. Current**, 16 N.M. 37, 113 Pac. 619 (1911), that, in the absence of statutory provisions prohibiting judicial proceedings on legal holidays, such proceedings are valid. A perusal of our statutes relating to legal holidays discloses that there is no prohibition against judicial proceedings on those days, and it is our opinion that judicial proceedings of every kind are valid, even when performed on legal holidays.

Our research discloses only one New Mexico case on the question of the validity of judicial proceedings on Sundays. In **Territory v. Nichols**, 3 N.M. 103, 2 Pac. 78 (1884), the Court recognized the common law rule that judicial proceedings on Sundays are void, but held that purely formal or ministerial acts could be performed on Sundays. Your question as it relates to judicial acts, or "holding court", is unanswered in our case law. Moreover, our research discloses nothing in our Constitution or statutes to abrogate the common law rule. We, therefore, advise that judicial proceedings other than purely formal acts are void if performed on Sunday. Thus, misdemeanor cases cannot be tried, nor fines imposed, on Sunday.

Your third question requires us to refer to several statutes. Firstly, § 36-2-8, N.M.S.A., 1953 Compilation, requires every justice of the peace to reside and hold his office within the precinct where he was elected, unless his precinct lies wholly or partly within the corporate limits of a city or town of more than 2,000 inhabitants, in which case he may have his office and hold his court anywhere within the corporate limits of such town or city. The same section permits him to preside at the court of a justice of the peace of another precinct of the same county upon written request of that justice of the peace. Section 36-2-9, N.M.S.A., 1953 Compilation, provides that no justice of the peace shall try any cause or hold his court outside of his precinct except in accordance with § 36-2-8, supra. Section 36-2-9, supra, goes on to say that if a city or town has appointed one justice of the peace to hear all cases of violations of the ordinances of that city or town, in accordance with § 38-1-15, N.M.S.A., 1953 Compilation, then that justice may hold his court for the trial of such cases anywhere within the limits of such city or town.

It should also be noted that § 14-23-8, N.M.S.A., 1953 Compilation, provides that the justice of the peace of the precinct wherein any incorporated village is situated has jurisdiction of cases of violations of the ordinances of that village. This section grants no power to the justice of the peace to hold his court or have his office outside of his precinct.

Therefore, no statute grants any justice of the peace the power to have his office outside of the precinct where he was elected, unless his precinct lies wholly or partly within the limits of a city or town of more than 2,000 inhabitants. With that exception, it is our opinion that a justice of the peace must **have his office** within the precinct for which he was elected.

Furthermore, no statute requires that the justice of the peace hold his court at his office. Section 36-2-8, *supra*, seems to draw a distinction between the office and the court, and implies that they may be in two different places. The statutes do require justices of the peace to hold their courts within their precincts unless the precinct lies wholly or partly within the limits of a town or city of more than 2,000 inhabitants, and unless a city or town has appointed one justice of the peace to hear all cases of violations of the ordinances of the city or town. With those exceptions, it is our opinion that justices of the peace must **hold court** within their own precincts, but that court need not necessarily be held at the same place as the office of the justice of the peace.

This is not to overlook the power of a justice of the peace to preside over cases in another precinct within the same county on written invitation of another justice of the peace. This is not really an exception to our ruling because in such cases the justice of the peace is not holding **his** court, but is holding the court of the justice who requested him to preside.

Justices of the peace having jurisdiction over village ordinances are in a different category. Section 14-23-8, *supra*, does not give them authority to have their offices or to hold their courts outside of their respective precincts. Therefore, it is our opinion that a justice of the peace having jurisdiction over cases of violations of village ordinances must nevertheless have his office and hold his court within the precinct where he was elected.

There are no such elaborate provisions for holding of court in police magistrate courts by municipal judges. But, in this respect, an important distinction is to be noted between justice of the peace courts and police magistrate courts. Our statutes create the office of justice of the peace, and he is empowered to establish his court. By § 37-1-1, *et seq.*, N.M.S.A., 1953 Compilation, our statutes create the police magistrate court, and the municipal judge is authorized to preside over that court. In the latter case, the municipal judge has no authority to specify the location of the police magistrate court. Therefore, it is our opinion that a municipal judge can only preside over cases within his jurisdiction at the location of the municipal court as determined by the governing body of the municipality.