

## **Opinion No. 63-18**

March 11, 1963

**BY:** OPINION of EARL E. HARTLEY, Attorney General

**TO:** Hon. Nils T. Kjellstrom Judge, Small Claims Court Bernalillo County Court House  
Albuquerque, New Mexico

### **QUESTION**

#### QUESTION

1. Can a writ of execution on a judgment of a small claims court be served outside of the county where the court is created?

#### CONCLUSION

1. Yes.

### **OPINION**

#### {\*39} ANALYSIS

Your request states that an action was brought in the small claims court of Bernalillo County, that both plaintiff and defendant were residents of that county, that judgment was entered for plaintiff, but defendant has now moved to another county. Hence, the question whether the court's writ of execution runs outside the county.

Section 16-5-1, New Mexico Statutes Annotated, 1953 Compilation, creates the small claims court with "general civil jurisdiction co-extensive with the county". It is a general rule that the process of a court cannot be served outside the territorial limits of the jurisdiction of the court, unless exceptions have been made by statute. See 72 C. J. S. "Process", Section 32.

Section 16-5-10, New Mexico Statutes Annotated, 1953 Compilation, provides:

"Judges of the small claims courts shall have full power and authority to issue whatever process may be necessary for the efficient discharge of their duties and to make, publish and enforce rules and order regulating the business and practice in their courts, not inconsistent with the laws of this state; they shall have the power to punish for contempt of court. The Rules of Civil Procedure for the district courts of this state shall govern in all cases and trials in such small claims courts. The small claims courts shall be open at all times for the conduct of business within their jurisdiction."

Section 16-5-11, New Mexico Statutes Annotated, 1953 Compilation, provides:

"In all cases where it is necessary to serve process or notice upon any person, firm, association, partnership or corporation interested in any proceedings or cause in such small claims courts, and the person, firm, association, partnership or corporation to be served has **removed from the state or cannot be found or serve** (sic) **therein**, or when his, its or their residence or whereabouts is unknown, then such service, notice, or process may be served as provided by Rule 4(g) of the Rules of Civil Procedure for district courts of the state of New Mexico." (Emphasis added)

Relying on these authorities, it was held in Attorney General Opinion No. 6172, May 26, 1955, that the process of the small claims court does not run outside of the county, except where the defendant was not within the state, in which case service could be had by publication in accordance {\*40} with Rule 4(g). This creates the incongruous result that a party can be served with process in another state but not in another county. It also places a severe limitation on the function of the small claims courts in handling small cases that otherwise clog the district court dockets. Such results are to be avoided wherever possible.

The legislature has made the rules of civil procedure for the district courts applicable to the small claims courts. The process of the District courts runs throughout the state. Note also that Section 16-5-11, supra, provides for publication **where the defendant has removed from the state or cannot be served therein**. This implies that there is no need for additional legislation where the defendant is within the state and can be served therein.

In our opinion, the legislature intended the small claims courts to be courts of general jurisdiction within the matters committed to their judgment. It is our opinion that the process of the small claims courts runs throughout the state, where the courts otherwise have jurisdiction, and may be served in any county of the state. It follows that execution may issue on the judgment of the small claims court of Bernalillo County, and may be served by the sheriff of another county to which the defendant has removed.

Attorney General Opinion No. 6172, May 26, 1955, is overruled.

By: Norman S. Thayer

Assistant Attorney General