

## Opinion No. 63-167

December 16, 1963

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

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

### QUESTION

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Can a small claims court obtain jurisdiction over the person of a defendant by service of process on the defendant outside the state of New Mexico under the provisions of Section 21-3-16, N.M.S.A., 1953 Compilation?

#### CONCLUSION

Yes.

### OPINION

#### {\*389} ANALYSIS

The small claims court is a court of inferior jurisdiction created by the legislature in 1953. The Act creating it (Section 16-5-1, et seq.) has been amended (twice). The latest applicable opinion of this office is No. 63-18, not yet published, which overruled Opinion No. 6172 found at page 134, Report of the Attorney General 1955-1956.

Although a court of inferior jurisdiction, Opinion No. 63-18, supra, held that the process of the small claims court did run throughout the State.

The Section above cited (21-3-16, N.M.S.A., 1953 Compilation) provides that a court may obtain jurisdiction over a person where service of process is made outside the state under certain conditions. The applicable portion of this act reads as follows:

"A. Any person whether or not a citizen or resident of this state who in person or through an agent does any of the acts enumerated in this subsection thereby **submits** himself or his personal representative to the **jurisdiction of the courts of this state** as to any cause of action arising from:

- (1) The transaction of any business within this state;
- (2) The operation of a motor vehicle upon the highways of this state;

(3) The commission of a tortious act within this state; or

(4) Contracting to insure any person, property or risk located within this state at the time of contracting.

B. Service of process may be made upon any person subject to the jurisdiction of the courts of this state under this section by personally serving the summons upon the defendant outside this state and such service has the same force and effect as though service had been personally made within this state." (Emphasis added).

The section above quoted does not specifically apply to small claims courts. Likewise it does not specifically restrict its operation to district courts or to courts of general jurisdiction. The court decisions are of no help on this point. The constitutionality of the statute, {\*390} insofar as the points raised are concerned, was upheld by our Supreme Court in the case of **Gray v. Armijo**, 70 N.M. 245 and in **Melfi v. Goodman**, 69 N.M. 488 and by the Circuit Court of Appeals, Tenth Circuit, in the case of **Clews v. Stiles**, 203 F.2d 290. Portions which are not here involved were construed in **Crawford v. Refiners Cooperative Association, Inc.**, 71 N.M. 1.

The small claims court is designated as a court with general civil jurisdiction co-extensive with the county within limits set forth by the statute. Its process, within such limits runs throughout the state. It also may obtain jurisdiction through service by publication under certain conditions. It logically follows that jurisdiction can also be obtained by a small claims court in a proper case, by following the provisions of Section 16-5-1, supra.

By: James V. Noble

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