

## **Opinion No. 63-58**

May 28, 1963

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

**TO:** Honorable Charles L. Craven Assistant District Attorney Eleventh Judicial District  
County Court House Aztec, New Mexico

### **QUESTION**

#### **QUESTIONS**

1. Does the legislation pertaining to Small Claims Courts passed by the New Mexico State Legislature in 1963 operate to terminate the existence of Small Claims Courts in counties having a population of less than 100,000 where those counties, under the former law, qualified for a Small Claims Court and have a Small Claims Court Judge serving in that capacity prior to January 1, 1965 when the new amendment becomes effective?
2. May a Small Claims Court Judge "hold court" in more than one place in the county?
3. Is it unconstitutional under Article VII, Section 2 of the New Mexico Constitution, to deny a lawyer, during the time he is serving as a Small Claims Court Judge, the privilege of engaging in the private practice of law as provided by Section 16-5-3, N.M.S.A., 1953 Compilation and Section 2 (B), Chapter 231 of the 1963 law?

#### **CONCLUSION**

1. Yes.
2. Yes, providing he maintains his principal office in the County seat, and the expense of a "branch court" is authorized by the county.
3. No.

### **OPINION**

#### **{\*124} ANALYSIS**

##### **QUESTION 1**

Section 1 (A) of the Small Claims Court Act, Chapter 231 of the Laws passed by the 26th Legislature provides:

"In **every county** having a population of one hundred thousand or more persons in the last federal decennial census, there is **created** a court of record designated as the 'small claims court for . . . county'." (Emphasis supplied.)

The act goes into operation on January 1, 1965 and expressly amends Section 16-5-1, N.M.S.A., 1953 Compilation which "creates" a small claims court in "every county" having a population of more than fifty thousand.

By its express terms, Section 1 (A), supra, amends and changes the conditions relating to the creation of a small claims court. Nowhere in the entire act is there the faintest implication that small claims courts in counties of less than one hundred thousand shall continue to function after the new law goes into effect. To say so would amount to enlarging the act both in words and meaning by reading into it something that is not within the manifest intention of the Legislature as gathered from the statute itself. **Burch v. Foy**, 62 N.M. 219, 224, 308 P. 2d 199 (1957).

As of January 1, 1965, the law restricts small claims courts to counties having a population of one hundred thousand or more. This intention can be clearly ascertained from the language of the statute. By causing courts to be "created" under Section 1 (A) supra, the Legislature is **bringing into existence an entirely new** system of small claims courts upon the express condition that a county have a population of at least one hundred thousand before a small claims court, in that county, can be established, maintained or continued after December 31, 1964.

## QUESTION 2

Section 16-5-2, N.M.S.A., 1953 Compilation (P.S.) which pertains to the maintenance and location of facilities of small claims court provides:

"Such courts shall be maintained at the expense of the counties in which they are hereby established. All receipts of such courts shall be paid to the county treasurer. The **principal** seat of the small claims court shall be in the county seat of the county wherein it is established. The board of county commissioners shall provide in one (1) central location suitable accommodations, equipment, library, supplies, records, stationery, blanks and such other supplies as may be necessary in the due operation of the court." (Emphasis supplied.)

The statute set out above provides {*\*125*} that only the principal office shall be located in the county seat. In other words, only the location of a main office is designated implying that a branch office of the court may be located elsewhere in the county if necessary. This conclusion is also supported by the fact that small claims courts in many respects, follow the procedure and rules of the District Courts. See Sections 16-5-4; 16-5-6; 16-5-11 and 16-5-12, N.M.S.A., 1953 Compilation. And district judges are authorized to rent suitable quarters for the transaction of court business whenever necessary, Section 16-3-30, N.M.S.A., 1953 Compilation, and are authorized traveling

and other necessary incidental expenses while absent from their district headquarters, pursuant to Section 16-3-33, N.M.S.A., 1953 Compilation.

We see no reason why a small claims court judge could not in his discretion, in the proper exercise of the administration of justice, hold court occasionally in a place other than the county seat where his principal office must be located. Of course the expense of a proposed "branch court" if found necessary, must initially be authorized and furnished by the county which maintains the court, pursuant to Section 16-5-2, *supra*.

### QUESTION 3

In answer to your last question, we quote the following excerpt from the opinion in **Board of Commissioners of Guadalupe County v. District Court of Fourth Judicial District, et al.**, 29 N.M. 244, 263, 233 P. 516 (1924):

"The Constitution does not provide that all **qualified voters** may hold public office without additional burdens or conditions. Article 7, Sec. 2 relates generally to the elective franchise and right to hold office. It is concerned entirely with the definition of personal qualifications and characteristics of persons who may vote, hold office, and sit as jurors. It does not purport to deal with anything else. Under such circumstances, the word 'qualified,' as employed in the section, must be held to be the equivalent of the word 'eligible.' The section is designed merely to point out the class of persons who are eligible to be chosen to hold public office and does not in any way attempt to deal with the subject of how, and in what manner, these officers shall qualify before entering upon the discharge of their duties. This being the case, we know of no principle which could restrict the Legislature in the requirement of bonds of public officers . . ." (Emphasis supplied.)

The same reasoning applies in this instance. In prohibiting a small claims court judge from practicing law while in office under Section 16-5-3 and Section 2 (B) of the 1963 Small Claims Court Act, the Legislature is attaching a lawful condition to the holding of the office. This in no way interferes with the class of persons who are eligible to be chosen to hold public office as prescribed by Article 7, Section 2 of the New Mexico Constitution.

The provision of the laws in question are clearly not unconstitutional.

By: George Richard Schmitt

Assistant Attorney General