

Opinion No. 63-68

June 21, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mr. Ethan K. Stevens Assistant District Attorney Eighth Judicial District Clayton, New Mexico

QUESTION

FACTS

As we understand it a justice of the peace has certain signs giving the location of his office. In addition, you state you are advised that this same justice has his wife solicit persons who are obtaining marriage licenses at the county courthouse to use her husband's services in performing marriages.

QUESTION

Are such practices prohibited under New Mexico law?

CONCLUSION

Yes.

OPINION

{*144} ANALYSIS

Section 36-20-2, N.M.S.A., 1953 Compilation, as amended in 1961, provides that:

"No justice of the peace or constable shall directly or **indirectly**. . . Publish advertising relating to his office." (Emphasis added)

As defined by the New Mexico Supreme Court the word "publish" means primarily to make known, to bring before the public, to disseminate. **State v. Elder**, 19 N.M. 393, 143 Pac. 482. "Publish" as used in Section 36-20-2, supra, is not limited to printed pronouncements but includes oral proclamation. This can be determined by referring to the title of the 1961 Act which added this restriction to those already imposed on justices of the peace. A portion of the title is "To Prohibit Advertising and Increase the Penalty."

Turning to the word "advertising", we find that it is frequently defined as "a means or method of attracting public attention and may be oral as well as in written or printed form and covers many means of seeking to develop in the public an interest in certain

matters or items." **State v. Cusick**, IOWA, 84, N.W. 2d 248; **McDonough v. Board of Education**, 189 NYS 2d. 401; **Bissell Carpet Sweeper Co. v. Masters Mail Order Co.**, 140 F. Supp. 165.

In the case of **People v. Schmitt**, Cal., 317 P. 2d 673, the term "advertisement", as used in a statute prohibiting the advertising of certain drugs, was said to mean, among other things, oral representations disseminated in any manner or by any means for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of an item or service.

There can be little doubt that the direction signs and the soliciting of business by the justice's wife amounts, at the very least, to an indirect publishing of advertising relating to his office. Such being the case these activities are prohibited by Section 36-20-2, supra.

By: Oliver E. Payne

Assistant Attorney General