

Opinion No. 12-891

May 11, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Mr. C. W. G. Ward, District Attorney, Las Vegas, N. M.

OPEN COURT.

"Open Court" means time and place when court is regularly organized for transaction of business and must be limited to regular or special court sessions.

OPINION

{*34} I have received your letter of the 9th inst. in which you ask for my construction of the provision of the Constitution which permits a defendant to plead guilty to a felony upon information filed against him, and especially as to what is meant by "open court."

I believe that "open court" means a time and place when the court is regularly organized for the transaction of business, and that in the absence of some statutory enlargement of the meaning of this phrase, it must be limited to regular sessions of the court held at a term fixed by law or specially called by the judge in accordance with statute. It is true that we have a statute which declares that the district courts shall be at all times in session and open at any place in the district where the judge may be, for certain specified purposes, which are plainly limited to interlocutory proceedings, except the rendering of final decrees in equity, but this probably refers only to civil cases. This section of the statutes certainly does not include such matters as final judgments in criminal cases.

It is probably within the power of the legislature to enlarge the meaning of the words "open court" so as to make it possible for a defendant to plead to an information at any time when the judge, clerk and district attorney may be present, as the court might be then considered as organized for the transaction of business. Practically, however, there may not be much need of this, as it is within the power of the district judges to keep terms of court open and continuing, for each county, up to the time of the next regular term fixed by law, so that the record would show that the proceedings were in open court under the narrowest definition of the term.