

Opinion No. 14-1200

April 22, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Linus L. Shields, Justice of the Peace, Jemez Springs, New Mexico.

SUNDAY LAW.

Sunday Law. Justice of the peace has no jurisdiction to punish violators of.

OPINION

{*60} I have just received your letter of the 20th inst., in which you ask my opinion as to the legality of holding public bailes on Sundays, {*61} and also whether you can refuse to grant a license for such a dance on a Sunday.

The statutes of New Mexico upon the subject of these dances, and also on Sabbath observances, are in a very unsatisfactory condition. The statute under which it is necessary to have a license from a justice of the peace to give a ball does not seem to give any discretion to the justice absolutely to refuse the license. The statute says, in substance, that if the justice of the peace considers the person asking the license not a competent person, he must so state to the applicant in order that he may present some person able to act as police officer during the ball, to whom he must administered an oath that he will keep good order during the ball.

The Sunday law is to be found in Secs. 1368 to 1374 of the Compiled Laws of 1897, the original act having been passed in 1887. I am satisfied that the original act was artfully and carefully drawn for the purpose of favoring such non-observers of the Sabbath as saloon-keepers, but the Supreme Court of the Territory, by a decision made in 1892, put life and strength into what had been a doubtful statute, to say the least, and held a saloon-keeper, who did business on Sunday, to have been rightfully convicted in the District Court. One practical difficulty about the act is that it requires any conviction to be in the District Court, and the jurisdiction of a justice of the peace would, therefore, be limited to holding an accused person to await the action of the next grand jury.

It is, however, by Sec. 1341 of the Compiled Laws of 1897, made an offence for any inhabitant within the limits of the Territory to appear drunk and a few prosecutions under that section in your court might have a restraining influence upon the disorderly.

Such things as you speak of, which disturb the church services, clearly constitute an offense under the Sunday law, as you will see by the language of Sec. 1368 of the Compiled Laws, a copy of which I will inclose herewith for your information. It has been held by our Supreme Court, in the case of Territory vs. Davenport, 17 N.M. 214, that a game of baseball would not fall within the prohibition of this statute because it would not

belong to the same class as horse racing and cock fighting. The question did not arise, however, in that case as to the disturbance "in any other manner" of any worshipping assembly, while in your case that question would certainly arise, as the disturbance of your church service must be great.

You ask also if there is any statute forbidding the holding of such assemblies within a specified distance of any church or school. I know of no statute of that kind in New Mexico.

You say that you have not yet been supplied with a copy of the Compiled Laws of 1897 by the County of Sandoval, but my recollection is that you once wrote me that the county clerk had informed you that he had a copy for you, and I think that I wrote you that I could see no reason why you could not send for it and get it from him. I think there is no way that he could be reimbursed from the public treasury if he paid the expense of sending it to you.