

Opinion No. 14-1258

June 26, 1914

BY: H. S. CLANCY, Assistant Attorney General

TO: Mr. J. M. Medina, Rinconada, New Mexico.

WATER.

Mayordomo of an acequia may be proceeded against for failure to perform his duty.

OPINION

{*118} I am just in receipt of your letter of the 24th inst. in which you ask for the opinion of this this office as to whether the mayordomo of a ditch may be proceeded against when he fails to perform the duties imposed upon him by law. In such a case, I call your attention to Section 49 of the Compiled Laws of 1897, which provides that any mayordomo who fails in the performance of his duties, unless such failure is occasioned by sickness, shall be fined in a sum not less than \$ 25.00 nor more than \$ 50.00.

You also inquire as to whether a mayordomo of an acequia should, before entering upon his office, take an oath that he will faithfully discharge the duties of the office to which he has been elected or appointed. In this connection I call your attention to Section 1 of Article XX of the Constitution of New Mexico, which reads as follows:

"Every person elected or appointed to any office shall, before entering upon his duties, take and subscribe to an oath or affirmation that he will support the constitution of the United States and the constitution and laws of this state, and that he will faithfully and impartially discharge the duties of his office to the best of his ability."

It would thus appear that before any person is duly qualified to act as mayordomo he must take and subscribe the oath prescribed by the Constitution.

You also inquire whether a man may use water from a community ditch for domestic purposes only without performing annual labor upon the ditch. Section 2 of Chapter 44 of the Laws of 1903, provides that any person not the owner or duly authorized representative of the owner of a water right in a ditch, who shall, contrary to the orders of the mayordomo or commissioners, take or use water from such ditch contrary to such orders, may be prosecuted before the nearest justice of the peace and upon conviction be fined not less than \$ 10.00 nor more than \$ 50.00. This office is of opinion that any person who fails to perform labor upon a community ditch is not {*119} entitled to the use of the water running therein for any purposes whatever.

In addition to the oath required by the Constitution a mayordomo is also required by the law to enter into a bond to the State of New Mexico in a sum to be fixed by the ditch commissioners.