

Opinion No. 14-1284

July 27, 1914

BY: IRA L. GRIMSHAW, Assistant Attorney General

TO: Mr. L. J. Peach, Columbus, New Mexico.

JUSTICE OF THE PEACE.

Justices of the peace must require attendance of witnesses upon motion for change of venue.

OPINION

{*145} We have your letter of July 22. We understand that a case was pending before you as justice of the peace of the precinct wherein the village of Columbus is a part, and that the party defendant made a motion for a change of venue to another precinct on the ground that you were prejudiced against him because you had declared that you expected to enforce the ordinances of the village.

Section 2408 of the Compiled Laws of 1897 and Chapter 11 of the Laws of 1907, which is amendatory of it, refers to justices of the peace within cities or towns. In cities and towns the city council, or board of trustees, designates a certain justice of the peace to try causes arising under its ordinances and that justice has exclusive jurisdiction in those cases.

Section 15 of Chapter 117 of the Laws of 1909, which is the chapter under which the village of Columbus was probably incorporated, provides that justices of the peace of the precinct, wherein the incorporated village is situate, shall have jurisdiction of violations of the ordinances of the village. It does not say that the justice of the peace of that village shall have exclusive jurisdiction nor do we think that any such conclusion is permissible. Sections 3329, et seq., of the Compiled Laws of 1897, contain the law in reference to the granting of a change of venue by a justice of the peace. You will note that the causes and grounds set out in the motion for a change of venue, according to those sections, must be proved in court before you are compelled to grant a change of venue. In the case to which you refer, it would be incumbent upon the defendant, or the person moving for a change of venue, to prove, as a fact and not as a naked assertion, that you are actually prejudiced against him before you would be required to grant the motion for a change of venue. If proof were adduced to the effect that you are prejudiced, you would be bound to change the venue of that cause in accordance with Sections 3329, et seq., of the Compiled Laws of 1897.

Our opinion is that a justice of the peace in an incorporated village has not absolute and exclusive jurisdiction in causes wherein he is {*146} disqualified to act and that when it appears by proof that he is disqualified he should change the venue in accordance with

Sections 3329, et seq. The simple declaration that you are prejudiced because you will enforce the ordinances of the village, in the absence of positive proof, is not sufficient to warrant you in making an order changing the venue of a cause pending in your court.