

Opinion No. 14-1349

October 5, 1914

BY: F. W. CLANCY, Attorney General

TO: Mr. Robert L. Moore, Albuquerque, New Mexico.

COURTS.

Section 1 of Chapter 56 of the Laws of 1912 relates to causes in the district court, and not to causes before justices of the peace.

OPINION

{*210} I have received your letter of the 3rd inst., asking my opinion as to whether Section 1 of Chapter 56 of the Laws of 1912, repeals by implication Section 3246 of the Compiled Laws of 1897.

My opinion is like yours -- that the Act of 1912 does not affect Section 3246 of the Compiled Laws. That section relates specially to proceedings in the courts of the Justices of the Peace, and as to the service of process of such courts by constables. While the Act of 1912, by its terms, appears to relate to the service of process by the sheriff, or by other persons over the age of eighteen years. I believe that that act relates to causes in the district courts, and has no relation to cases in the courts of Justices of the Peace. You will notice that it provides that in civil causes, summons and copy of complaint may be served by the sheriff, or by any other person, not a party to the action, over the age of eighteen years. There never has been any requirement that copies of complaints in the courts of Justices of the Peace should be served, nor, indeed, is there anything that requires that civil causes in those courts should be begun by complaint.

On the other hand, the code of civil procedure which provides for the beginning of civil actions by complaints, requires the clerk to endorse the time of filing on the complaint, and to issue summons {*211} under the seal of the court, with which summons a copy of the complaint may be served, if the plaintiff chooses so to do. The Act of 1912 clearly has reference to this class of cases. Section 2 of this act corroborates this view of Section 1 as it refers to service of papers by the attorneys of record, and also says that no clerk shall be permitted to charge for copies made by attorneys in the case. In the ordinary use of the language, we would not say that there are attorneys of record in the courts of Justices of the Peace, and certainly there is no clerk of such courts.