

Opinion No. 14-1393

November 30, 1914

BY: IRA L. GRIMSHAW, Assistant Attorney General

TO: Hon. Edward C. Wade, Assistant United States District Attorney, Santa Fe, New Mexico.

MARRIAGE CEREMONIES.

U. S. district judge and commissioners not authorized to perform marriage ceremonies.

OPINION

{*255} I desire to apologize for the long delay in answering your oral request for our opinion as to whether or not the laws of New Mexico authorize the United States district judge and the United States commissioners of this district to perform marriage ceremonies.

Section 1414 of the Compiled Laws of 1897 provides that it shall be lawful, valid and binding for those who may desire to solemnize the contract of matrimony by means of any ordained clergyman or any "civil magistrate." This section was passed in 1860 and was Section 2 of a special act of the legislature, incorporating the Mesilla Mining Company. The act was in Spanish.

At the time of the passage of that act, there was in existence in New Mexico, among others, certain officials of the United States designated as commissioners of circuit courts of the United States. In many respects, those officials exercised much the same functions as do the United States commissioners at this time. The authorities lean to the holding that a United States commissioner exercises both judicial and ministerial duties, but is primarily a judicial officer, being "an arm of the court." There is no doubt in our minds but that the judge of the United States district court is a civil magistrate, and that the United States commissioners, insofar as they may act, are also civil magistrates.

Manifestly, the United States district judge and the United States commissioners are literally included within the term "civil magistrate." However, it is our opinion that the legislature, by the use of the words "civil magistrates," intended to confer the power or privilege upon a class of officers created by the laws of the Territory of New Mexico, and had no reference to officers created by any foreign authority. As the United States district judge and the United States commissioners exercise their powers by virtue of the {*256} laws of the United States, and not of the Territory or State of New Mexico, we believe that those officers are not authorized to perform marriage ceremonies, although, literally, within the definition of the words "civil magistrate."