

Opinion No. 15-1567

June 29, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. J. D. Mell, Roswell, N. Mex.,

Section 4647 of the Codification does not repeal Section 5874.

OPINION

{*146} I have before me your letter of the 24th inst. asking whether Section 4647 of the 1915 codification repeals Section 5874. I am of opinion that there is no repeal of Section 5874. Both of them are parts of the new act of the legislature and neither should be allowed to destroy the other if they can possibly both stand, as I believe that they can. Section 5874 was originally part of Chapter 90 of the Laws of 1899, while Section 4647 was originally Section 5 of Chapter 49 of the Laws of 1912. The earlier section is one for the giving of notice of the time for proving a will and ought not to be considered as changed or modified by the later act, which is a general one on the subject of legal notices as to matters in both the district and probate courts. Section 5874 requires the county clerk to give the notice, which notice must be personally served upon interested parties so far as they are resident within the state, at least ten days before the day of hearing, and he must also post a copy of the notice in English and Spanish at the front door of the court house at least three weeks previous to the day fixed for hearing and must publish the notice in some newspaper in the county once a week for three consecutive weeks, the last publication being at least ten days before the time fixed for the hearing. There is nothing required by this section which can be considered as changed by Section 4647 with the possible exception that the publication in a newspaper must be in the English language, and once each week {*147} for four successive weeks instead of for four consecutive weeks. While I believe that publication following the terms of Section 5874 would be sufficient, yet to avoid any possible complication or difficulty, I would advise that the the publication of the notice of the time for proving of a will be in a newspaper for four successive weeks, allowing the last publication to be at least ten days before the time fixed for the hearing, following in all other particulars that which is contained in Section 5874. There would then be a compliance with both statutes and there would be no room for anyone to make objection.