

Opinion No. 15-1637

September 16, 1915

BY: H. S. CLANCY, Assistant Attorney General

TO: Mr. W. W. McClellan, Justice of the Peace, Albuquerque, New Mexico.

Furnishing security for costs by non-resident plaintiff in suit pending before a justice of the peace. No speed limit fixed by statute for automobiles outside of incorporated cities.

OPINION

{*209} I am in receipt of your two letters of the 14th inst. in which you ask for the opinion of this office upon two matters.

You desire to know whether a non-resident plaintiff in a suit pending before a justice of the peace can be compelled to furnish {*210} security for costs, in the absence of any statute upon that subject. In my opinion he can, and in support of this view I refer you to 11 Cyc. 171, where the following language is used:

"In America also, in practically all jurisdictions, it is competent and customary to require a non-resident of the state to give security for costs, this being the usual ground for requiring security. It is probably true that in most jurisdictions there is express statutory authorization for so doing, but notwithstanding this fact it may be asserted with confidence that the right to require security for costs from a non-resident suitor, whether in law or in equity, exists here as in England, without any statute or rule of court specially providing therefor; and that the statutes are merely declaratory of the common law."

I believe that the foregoing citation correctly states the law, and I believe that a justice of the peace would be justified in granting a motion for security for costs in case the plaintiff is a non-resident, but where the plaintiff is a resident. in the absence of any statute in New Mexico, I do not believe that such a motion should be granted.

In regard to your other question as to the speed of automobiles outside the limits of an incorporated city, there can be no doubt that your holding that there is no speed limit fixed by statute is correct.