

Opinion No. 16-1725

January 27, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. B. D. Richards, Justice of the Peace, Gallup, New Mexico.

Jury in justice of the peace courts passes on both questions of law and fact in civil cases.

OPINION

{*298} I have today received your letter of the 25th inst. asking my opinion as to whether a justice of the peace is empowered to pass on questions of law when a jury is empaneled and sworn, or should the jury pass on both questions of law and fact in civil cases.

I believe that this is the first time that I have ever had occasion to consider this question, and I cannot find anything definite or explicit in our statutes. In Section 3203 of the new codification, the form of oath for jurors is such that it might be implied that they are to pass upon the law as well as the facts. There is absolutely nothing in the statutes directing or authorizing a justice of the peace to instruct the jury as to the law, and it has been held by the supreme courts of Iowa and Nebraska that he has no such authority in the absence of statutory or constitutional provisions giving it. In one case the opinion said that a justice of the peace had no power to set aside a verdict and order a new trial or to grant a motion in arrest of judgment, as illustrating his lack of authority to control the juries as to matters of law. Our statutory condition appears to be the same and I am of opinion that the law and the facts both are left to the jury.

In Georgia it seems to be well settled that a justice of the peace must not instruct the jury as to the law, while in New Jersey the opposite doctrine is stated, but so far as I have had time to examine the decisions in that state, I have not seen the foundation for their doctrine. In Oregon it was held that it was a mere irregularity for a justice to instruct the jury, which would not affect the jurisdiction, the court declining to pass on the question of whether the justice was authorized so to instruct or not. In New York the doctrine appears to be that the jury is the judge of both law and fact. In South Carolina it has been held that the justice must instruct the jury in obedience to a constitutional requirement which declared, in substance, that in jury trials the judge must instruct the jury as to the law, the constitutional language being such as to include justices of the peace.

I will enclose herewith a memorandum of some of the authorities which I have examined and hope that you will be able to find some of them at least, in Gallup.