

Opinion No. 16-1745

February 18, 1916

BY: H. S. CLANCY, Assistant Attorney General

TO: Ralph G. Roberson, Esq., Justice of the Peace, Estancia, New Mexico.

Issuance of an execution by a justice of the peace in an amount exceeding \$ 200.00.

OPINION

{*315} I am just in receipt of your letter of the 16th instant enclosing copy of one addressed to this office upon January 3, 1916. An apology is due to you for not sooner answering your letter, but it was mislaid, and I am glad that you have called attention to the fact that it was not answered.

This office has carefully considered the question propounded in your letter as to the construction to be placed upon the provisions of Chapter V of the Codification of 1915, and we have come to the conclusion that it would be unsafe, to say the least, for a justice of the peace to issue the execution provided for in Section 245 where the amount involved exceeds two hundred dollars. The section last referred to provides that "any court of this state" may issue the execution, but this language must be construed to mean any court of competent jurisdiction, and irrespective of the agreement provided for in Section 241, that no appeal shall be taken from the decision of the arbitrator, yet courts have held that such an agreement would not bar the right of any of the parties to appeal to a higher court. I suggest that the parties interested should make appeal to the district court for the issuance of an execution, so that there may be no question as to jurisdiction.

{*316} In regard to the collection of fees by a justice of the peace from the county, when it is impossible to collect them from the defendant in a criminal case, I enclose to you herewith an opinion of this office of January 26, 1916, addressed to Mr. J. B. Arellano, a justice of the peace at Springer, New Mexico, which, I believe, answers your question.