

## Opinion No. 16-1790

May 1, 1916

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. Linus L. Shields, Justice of the Peace, Jemez Springs, New Mexico.

**As to collection by a justice of the peace of a fine imposed by a mayordomo of an acequia.**

### OPINION

{\*359} I have your letter of the 28th ultimo concerning a proceeding before you by the mayordomo of a community acequia to recover the amount of a fine imposed by him in the exercise of the authority conferred by Section 5791 of the Codification of 1915. I am of opinion that you should proceed under Section 5761 rather than 5791. You have already noted the fact that Sections 5787 to 5797 are made applicable to your county, but it is my opinion that you must hold that those sections are not valid because in conflict with Section 24 of Article IV of our state Constitution, which prohibits the passage of local or special laws regulating county, precinct or district affairs. This prohibition is substantially the same as one contained in an act of Congress limiting the power of our territorial legislature, and I am informed that at least one district court held this act to be invalid on account of that prohibition. A justice of the peace, when the exigencies of a case require him to pass on a question of that kind, must hold a statute invalid if he is of opinion that it is in conflict with the Constitution. If this is correct, then we are remitted to the other section as to which you ask {\*360} about their applicability running from Section 5759 to 5768.

You ask further whether there have been any supreme court decisions touching this matter, and as far as I am informed the only one is that referred to in the annotations to Section 5761. The provision referred to in that opinion, by which the defendant might be compelled to work fifteen days on the public works if unable to pay his fine, seems to have disappeared from the statute, but I cannot now tell when it was amended, but it must have been many years ago, as Section 35 of the Compiled Laws of 1897 is in the same language as Section 5761 of the Codification.

As to the giving of a bond by the mayordomo, although this is distinctly required by Section 5746, yet I do not believe that that would affect the validity of his action as a mayordomo. That section requires him to give a bond in a sum to be fixed by the commissioners, and if the commissioners do not fix any such sum, there is no way that he could give a valid bond, and yet he has been elected by the people of the community to serve as their mayordomo, and I do not think that his official capacity can be questioned on account of lack of a bond.