

## Opinion No. 17-1994

May 31, 1917

**BY:** HARRY L. PATTON, Attorney General

**TO:** Hon. John F. Simms, Attorney, Albuquerque, New Mexico.

Requirements of Service by Publication

### OPINION

I am in receipt of your letter of the 29th instant asking for construction of our statutes relative to the service of defendants by publication in cases pending in district courts.

Section 4647 provides for the publication of legal notices of various character. It further provides for the number of insertions and the length of time which must elapse between the last insertion and the date on which the defendant is notified to appear. Section 4651 reads as follows:

"Except as otherwise provided in this chapter, in counties wherein there is published a newspaper of general circulation, at least thirty per cent of the reading matter of which is in the Spanish language, publications referred to in this chapter, required by law to be made shall likewise be published in the Spanish language in such newspaper. Provided, in all legal proceedings wherein no party to the record is a Spanish-American, publication in the Spanish language shall be unnecessary."

I note your comment as to Section 4095, to the effect that the same is specific as to service of process by publication and prevails of Section 4647, which is a general statute. Ordinarily this rule would apply as to these two sections. Section 4095 is taken from the Compiled Laws of 1897. It appeared as sub-section 24 of Section 2585. Sections 4647 and 4651, Code 1915, are parts of Chapter 49, Laws of 1912. It may be seen that the law appearing in the Compiled Laws of 1897 ante-dates the act of 1912. At that time it was our only statute upon the subject of the publication of notice of suits pending in the district court. As appearing in the Compiled Laws of 1897 it contains the following language:

"and shall be published for at least once a week, for four consecutive weeks, the last publication of which shall be at least twenty days before the date on which the defendant is notified to appear."

This clause is omitted from Section 4095. It follows that Section 4095 prescribes when notice by publication may be had and that it may be published in some newspaper, and prescribes what the notice shall contain, but does not make any provision for the length of time for which the notice shall be published. The clause referred to was doubtless

omitted from this section by the compilers for the reason that full provision was made in Section 4647.

You state that the names of several of the defendants indicate that they are Spanish-Americans, but that it is alleged that their residence is unknown. Under Section 4651 I think it is immaterial as to what the residence of the defendant may be. The test is as to whether or not any "party to the record is a Spanish-American;" if so you are not relieved of the necessity of publishing the notice in a Spanish paper.

This appears to be a civil suit of a private nature and I do not think that an opinion of the attorney general would have much weight, and especially would not be binding upon either party. Notwithstanding this, I will state that if I were counsel for plaintiff in the case, I should consider it advisable to publish the notice of suit in such case in a Spanish newspaper where there is one published in the county, as provided in Section 4651.