

**Opinion No. 19-2440**

November 26, 1919

**BY:** HARRY S. BOWMAN, Assistant Attorney General

**TO:** Mr. J. D. Kavanaugh, Las Vegas, N.M.

Appeal to District Court in Peace Proceeding in Justice of the Peace Court.

**OPINION**

I am just in receipt of your letter of the 22nd instant, requesting an opinion regarding appeal from the Justice of the Peace to the District Court in connection with peace proceeding, and in reply wish to advise you as follows:

Your first inquiry concerns the jurisdiction of the justice of the peace to try a case and place a person under peace bond where the acts complained of take place in a precinct other than that of the justice of the peace before whom the trial was had.

Section 3168, Code 1915, provides that the jurisdiction of justices of the peace shall be co-extensive with the limits of the county in which they shall be elected, and section 3180 provides that the jurisdiction of the justice of the peace in criminal cases is throughout the county in which he is elected and where he shall reside.

From the foregoing, it is apparent that a justice of the peace would have jurisdiction over peace proceeding if the acts complained of occurred in the county in which he was elected, and the fact that the complaint set out that the acts occurred in one precinct when in fact they occurred in another precinct would not deprive him of jurisdiction. Therefore, we are of the opinion that the defect in the complaint would not be fatal, and that the proceeding need not be dismissed for that reason by the district court.

Your second inquiry involves the question as to whether a person placed under peace bond is compelled to give a bond before he has a right of appeal to the District Court, by reason of the judgment ordering him to give the peace bond.

This question presents some difficulty, as there is no specific statute giving an appeal from the judgment placing a person under peace bond. The proceeding provided by law in such cases is provided for in section 3275, Code 1915. Whether or not this procedure is exclusive is questionable, however, as appeals from justice of the peace judgments are allowed in all criminal cases by section 3232, Code 1915, and as appeals should be allowed in cases of peace bond, we are of the opinion that the appeal could be allowed by the justice of the peace even though the peace bond has not been given.

The matter is one of such uncertainty, however, that we are not suggesting that you proceed to act upon this opinion. We would suggest that a case be taken through the

District Court to the Supreme Court, and a decision had which would finally settle the question.