

**Opinion No. 20-2635**

July 7, 1920

**BY:** N. D. MEYER, Assistant Attorney General

**TO:** Mr. J. W. Porter, Tucumcari, N.M.

Malfeasance in Office By Justice of the Peace.

**OPINION**

This office is in receipt of your letter of recent date in which you lay before us the demeanor of a justice of the peace in your county in regard to instructing juries in cases tried before him, and further the practice of taking sides in cases.

You are advised that so far as instructing the jury in cases tried before a justice of the peace, our statutes are silent. Under the common practice we believe if requested by either or both sides, a justice of the peace may give instructions on matters of law. However, it is seldom that such requests are made. If either party is dissatisfied with instructions given to a jury by a justice of the peace, his remedy would be by appeal to the district court. It is certainly not proper for a justice of the peace, after a jury has retired to consider a cause, to enter into the room where the jury is deliberating, or in any other way communicate any views to the jury in regard to the evidence or facts in the case. That is a matter absolutely within the jurisdiction of the jury itself. Any error that a justice of the peace might commit in the rejection or admission of evidence, can be corrected only by removing the case to the district court on appeal.

By referring to Section 3954, et seq., you will notice in what cases and for what reasons a public officer, including a justice of the peace, may be removed. Should any officer prove to be unworthy to occupy the office which he holds, the law provides a procedure for removal which is set forth under the sections referred to.