

Opinion No. [30-114]

May 7, 1930

BY: M. A. OTERO, JR., Attorney General

TO: Mr. M. A. Branch, Coyote, New Mexico.

WATERS -- Duties of mayordomo, 151-424, Code 1929, 151-432, Code 1929.

OPINION

In response to your request for an opinion from my office setting forth the duties of the mayordomo of an acequia, I beg to advise as follows:

In the first place, section 5754 of the Code of 1915 provides that:

§ 5754. Duties of commissioners and mayordomo. The commissioners shall assess fatigue work or tasks of all parties owning water rights in said community ditches or acequias, and shall have power to contract and be contracted with and also to make all necessary assessments to provide funds for the payment of the salary of the mayordomo and other legitimate expenses incident to the proper conduct and maintenance of the acequias under their charge, and also to make contracts for obtaining water for irrigation purposes in connection with their ditches, such contracts to be ratified by a vote of a majority of the owners of water rights in said ditches, and shall have general charge and control of all affairs pertaining to the same, together with the power to receive money in lieu of said fatigue or task work at a price to be fixed by them, and shall, immediately upon taking office, provide bylaws, rules and regulations not in conflict with the laws of the State for the government of said ditch or acequia, and a printed copy thereof shall be furnished to each owner of a water right in said ditch. The mayordomo or superintendent shall, under the direction of said commissioners, be the executive officer of said ditch and have the superintendence of all work thereon and the distribution of the waters thereof, with the collection of fines, if any, and of amounts to be paid in lieu of fatigue or task work, and shall perform such other duties in connection with said ditch as may be prescribed by the rules and regulations of the same or as may be directed by the commissioners."

From the foregoing, you can see that while the mayordomo is the executive officer of the acequia, at the same time he is at all times under the direction and control of the acequia commissioners.

In addition to the foregoing, the mayordomo has the duty of seeing to it that the proprietors of lands irrigated by such acequia must not neglect nor refuse to furnish the number of laborers required by him at the time and place he may designate and the law provides that these fines shall be recovered by the mayordomo before any justice of the

peace in the county, and that in such cases, the mayordomo may be a competent witness to prove the offense, or any fact that may serve to constitute the same.

The law is very strict with regard to the performance of his duties by the mayordomo and section 5762 of the Code reads as follows:

§ 5762. Malfeasance of mayordomo -- Removal. If any mayordomo of any public ditch or acequia, after having undertaken to serve as such, shall wilfully neglect or refuse to fulfill the duties required of him by the five preceding sections, or conduct himself with impropriety or injustice in his office as mayordomo, or take any bribe, in money, property, or otherwise, as an inducement to act improperly, or neglect the duties of his office, he shall be fined, for each of said offenses, in a sum not exceeding ninety dollars, to be recovered before any justice of the peace in the county, and on being convicted a second time, he may be removed from his office by the justice of the peace of the precinct, on the petition of two-thirds of the proprietors of the land irrigated by said ditch or acequia."

Trusting that the foregoing gives you the information you desire, believe me to be,