

**Opinion No. [30-60]**

February 25, 1930

**BY:** J. A. MILLER, Assistant Attorney General

**TO:** Hon. J. J. Kenney, District Attorney, Santa Fe, New Mexico.

PEACE PROCEEDINGS -- No appeal allowed. § 79-1001, § 79-1005, Code 1929.

**OPINION**

I have yours of the 24th inst. with which you enclose a copy of a letter written by you to one Jose Abad Maestas, Justice of the Peace, and in which you raise a question of the right of appeal from the decision of a Justice of the Peace in a peace proceeding. You ask for an opinion from this office on the question of the right of appeal.

Peace proceedings are governed by section 79-1001 to 79-1005 of the Compilation of 1929. We note that the complaint filed in instituting such a proceeding is not a criminal complaint nor is the hearing thereon a trial but rather analogous to a preliminary hearing. It is the duty of the Justice to examine into the truth of the complaint "and if upon such examination he shall be of opinion that there was just cause therefor, he shall order the person complained of to enter into good recognizance with good and sufficient security . . . that he or they shall keep the peace . . . for the peace of six months thereafter and in default of such recognizance the justice shall commit the person or persons so complained of to the jail of the county and to remain until discharge by due course of law."

A person who has given bond to keep the peace must appear on the first day of the next term of the District Court, etc., 79-1004.

I agree with you that in effect the statute itself provides the way of appeal. The matter must come up to the district court at the next term following the hearing before the justice. An appeal could bring it to the district court no sooner. I am of the opinion that the defendant is no more entitled to an appeal in this proceeding than he would be to appeal from the finding of the justice in a preliminary hearing on a charge of felony.

Section 27 of Article VI of the Constitution of the State, providing for appeals from courts of justices of the peace, I am of the opinion applies only to cases in which the justices has jurisdiction over the offense tried before such court.