

Opinion No. 35-977

April 9, 1935

BY: FRANK H. PATTON, Attorney General

TO: Hon. Lee Brown Atwood, Attorney at Law, Lordsburg, New Mexico.

{*60} I have received your letter of April 5, 1935, calling my attention to the provisions of Section 26 of Article VI of the State Constitution and in which you raise the question of whether or not it is mandatory "that Police Judges and Magistrates be elected by the people of the municipality."

I do not know of any case in which this question has ever been raised or decided in this state. I have heard the question discussed before but not in the exact form that you ask it.

Section 26, Article VI of the Constitution provides that:

"Justices of the peace, police magistrates and constables shall be elected in and for such **precincts or districts** as are or ___ may be provided by law."

Under the present system as outlined in Section 90-910, 1929 Compilation, any justice of the peace has jurisdiction to act as police judge except that the city counsel **may** designate one justice of the peace to have such jurisdiction exclusively. The result is that the police judge is not elected by the people of the municipality but by the people of one precinct in the municipality. Of course, Section 26 above quoted does not mention municipalities but I can see that there may be some question as to whether or not the word "district" would include municipality. The Constitution, however, does not expressly limit the jurisdiction of police magistrates to the precinct or district in which they are elected.

While I have no settled opinion on the matter, I am inclined to believe that the courts at this time would sustain the validity of our {*61} present law on the subject.

The expression of these views probably won't be of much assistance to you but if you wish me to go into the matter further, I will be glad to do so.

With kind regards and best wishes, I am,

By QUINCY D. ADAMS,

Asst. Atty. General