

Opinion No. 36-1431

September 22, 1936

BY: FRANK H. PATTON, Attorney General

TO: Mr. Elliott S. Barker, State Game Warden, Santa Fe, New Mexico.

{*139} You have requested our opinion upon a matter which is referred to in a letter addressed to you by Mr. M. Stevenson under date of September 19, 1936.

It appears from this letter that on December 24, 1934, some person killed a doe deer in Roosevelt County, New Mexico, near the Lea County line. He was tried in Lea County but upon the Court being informed that the alleged crime occurred outside of Lea County, he dismissed the case. The question arises whether this person can now be tried in Roosevelt County for this same offense.

In my opinion he can be tried in Roosevelt County. The plea of former jeopardy is not available except when it is shown that the former proceeding was had in the same county where the prosecution is then pending. 8 R.C.L. 136, Section 116; Campbell vs. People, 109 111. 565, 50 Am. Rep. 621.

By QUINCY D. ADAMS,

Asst. Atty. General