

**Opinion No. 36-1472**

November 19, 1936

**BY:** FRANK H. PATTON, Attorney General

**TO:** Mr. Earl E. Stiles County Clerk Hillsboro, New Mexico

{\*34} This letter is to supplement my letter to you of November 18th as well as my telephone conversation with you on the afternoon of said date.

At this time I wish to direct your attention to the phraseology of Section 33-3504 of the 1929 Compilation which reads as follows:

"So soon as convenient buildings can be had at such new county seat the courts for said county shall be held therein, and so soon as the new court house and jail shall have been completed, the county commissioners shall cause all the county records, county offices, and the property pertaining thereto, and all county prisoners, to be removed to the new county seat."

The case of Territory vs. Riggle, 16 N.M. 713, did not take into consideration the question of holding court at the new county seat and the holding in that case was to the effect that county offices, books, papers, records and prisoners could not be removed to the new county seat until completion of the new court house and jail.

The section above quoted is in two parts. The first part has application to holding of court at the new county seat so soon as convenient buildings can be had. The second part has application to removal of county offices, records, etc., to the new county seat upon completion of the new court house and jail.

There is a strong probability that the word "courts" as used in this section would be interpreted, if the question should ever arise in the Supreme Court of the state, as meaning DISTRICT COURTS and that the Probate Court of the county and the records of same constitute a county office and county records and are in the same position as other county offices.

I have read the Resolution of the Board of County Commissioners of Sierra County of November 17, 1936, and find that said Resolution merely orders the holding of court at the new county seat in a building which has been provided therefor, and that the order of removal of county offices and records is contingent upon the completion of the court house and jail and that same are not to be removed until that time.

{\*35} From records which have been presented to me, it appears that convenient buildings have been obtained at the new county seat for the purpose of holding court and it is therefore my opinion that the District Court may and shall convene and hold its sessions at the new county seat in such buildings.

It is my further opinion, upon authority of 16 N.M. 713 and the section herein quoted, that none of the other offices of the county nor the books, records, papers, prisoners, etc., shall be removed to the new county seat until the court house and jail shall have been completed. This, in my belief, includes the Probate office.

I am giving a copy of this letter to Mr. Leo Smith who presents evidence to me that he has been appointed as your deputy. I am also mailing a copy of same to Honorable Fred Nicholas, District Attorney, Los Lunas, New Mexico.