

Opinion No. 37-1643

May 17, 1937

BY: FRANK H. PATTON, Attorney General

TO: Mr. F. G. Flores Justice of the Peace Santa Rosa, New Mexico

{*100} This will acknowledge receipt of your letter dated May 13th relating to peace bonds wherein you inquire in substance as follows:

"1. May a peace bond be withdrawn or cancelled at the request of the original complaining witness at any time before the expiration date of the bond?"

"2. May a peace bond be forfeited for a breach of the peace although no offense was committed by the bounden against the original complaining witness?"

Your first question should be answered in the negative. Peace proceedings are criminal in nature and the State of New Mexico and not the complaining witness is the primary party in interest. The law provides that the bond shall run for a period of six months and further, the bounden must appear before the district court on the first day of the next term thereof and the district judge is the only person with authority to either discharge the bond or continue the same in effect. See Sections 79-1004 and 79-1005 of the New Mexico Statutes Annotated, 1929 Compilation.

Your second question should be answered in the affirmative. Section 79-1001, New Mexico Statutes Annotated, 1929 Compilation, provides in part that one of the conditions of the peace bond shall be "that he or they shall keep the peace and be of good behavior **generally**." This being so, liability on the bond is not based solely on the commission of an offense against the complaining witness but apparently any breach of the peace would be sufficient basis for a forfeiture of the bond.

We trust the foregoing sufficiently answers your inquiries. Should further difficulties arise on this matter, I would suggest that you consult your District Attorney.

By: FRED J. FEDERICI

Asst. Atty. Gen.