Opinion No. 58-203

October 6, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Joel B. Burr, Assistant Attorney General

TO: Hon. W. R. Kegel, District Attorney, First Judicial District, Santa Fe, New Mexico

QUESTION

QUESTION

Is Attorney General's Opinion No. 3305, dated October 17, 1939, ruling that there is no appeal in peace proceedings from the Justice of the Peace Court to the District Court, still in effect?

CONCLUSION

The conclusion reached therein is correct but see opinion as the reasoning is modified herein.

OPINION

ANALYSIS

After a careful reading of Attorney General's Opinion No. 3305 issued October 17, 1939, and Attorney General's Opinion dated February 25, 1930 (1929-30, p. 138) upon which the former is based in part, this office cannot agree with the reasoning utilized therein. We, therefore, find it necessary to specifically overrule the above quoted opinions and substitute the following in lieu thereof.

The statutory provisions material to your inquiry are as follows:

§ 36-14-1, N.M.S.A., 1953 Compilation:

"Whenever any person shall make oath or affirmation stating, amongst other things, that the person making such complaint has just cause to fear, and does fear, that another will beat, wound or kill him or her, or his or her ward, child or children, or will commit some other act of personal violence upon him or her or them, or will maliciously destroy his or her property, it shall be the duty of the justice to whom such complaint is made as aforesaid, to issue his warrant, commanding the officer to arrest and bring before him the person complained of, to answer such complaint; and upon the return of the warrant with the person in custody, it shall be the duty of the justice to examine into the truth of such complaint, and if upon such examination he shall be of opinion that there was just cause therefore, he shall order the person complained of to enter into recognizance with

good and sufficient securities in a sum not to exceed five hundred dollars ($ 500), nor less than one hundred dollars ($ 100), conditioned, that he or they shall keep the peace and be of good behavior generally, and especially to the person complaining, for a period of six (6) 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, thereto remain until discharged by due course of law."

§ 36-14-4, N.M.S.A., 1953 Compilation:

"A person who has given bond to keep the peace must appear on the first day of the next term of the district court, and if the complainant appear, and the defendant do not appear, the district court may forfeit the bond and order scire facias to issue against the parties on the bond; and if the defendant fail to come in and answer the scire facias, judgment shall be final against the parties on said bond."

§ 36-14-5, N.M.S.A., 1953 Compilation:

"If neither the complainant nor defendant appear, the district court must discharge the bond at the costs of the defendant; but if both parties appear, the court may hear their proofs and allegations, and may either discharge the bond or require a new one for a time not exceeding six (6) months, and award the costs against either the complainant or defendant as justice may require."

It should be noted at this point that the compiler of our Compilation indicates that §§ 36-14-4 and 36-14-5 supra, may have been superseded by § 36-14-1, inasmuch as the latter originally contained the following language before its omission by an amendment in 1915:

"Section 6. The affidavit of the complainant, the bond and other papers in the case, must be returned by the justice of the peace to the clerk of the district court on the first day of the next term thereof."

It is a universally accepted principle of law that repeals by implication are not favored, and that if two statutes, seemingly in conflict, may be read in such a way as to give them both effect, this should be done. Applying this rule of law to the instant case, we find nothing incompatible with the statutes in question. One section sets out the procedure to be followed initially in the justice of the peace court, while the latter two deal with proceedings in the district court. Accordingly, we conclude that §§ 36-14-4 and 36-14-5 supra, have not been superseded by § 36-14-1 supra.

Our Supreme Court has ruled that judgments in special proceedings are not appealable unless permitted by statute. **State** v. **Florez,** 36 N.M. 80, 8 P. 2d 786. Inasmuch as the proceedings provided for in § 36-14-1 et seq., are special statutory proceedings, this office need not, and does not voice any opinion as to whether §§ 34-14-4 and 34-14-5 supra, in effect constitute an appeal in peace proceedings from the Justice of the Peace Court to the District Court. Suffice it to say that for all practical purposes this is the

result. The matter must come up to the district court at the next term following the hearing before the justice of the peace. As was pointed out in Attorney General's Opinion dated February 25, 1930, an appeal could bring it to the district court no sooner. It is also significant to note that under § 34-14-5 supra, the district court may hear the proofs and allegations of both parties and then either discharge the bond or require a new one. These considerations guarantee a defendant all the rights an appeal is designed to accomplish.