

Opinion No. 63-117

September 11, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mr. Anthony M. Petrose, Sr. Justice of the Peace, Precinct No. 47 2717 Morris, N. E. Albuquerque, New Mexico

QUESTION

QUESTIONS

1. May a Justice of the Peace have his office in his home even though the area is zoned residential only by the municipality?
2. If so, how large may the sign be which advises the public that the residence is a justice of the peace office?
3. May constables carry firearms?

CONCLUSIONS

1. Yes.
2. The size shall be as prescribed by the Court Administrator.
3. Yes.

OPINION

{*266} ANALYSIS

Section 36-2-8, N.M.S.A., 1953 Compilation, provides that

". . . any justice of the peace living in and elected in a precinct which is situated in whole or in part within the corporate limits of such town or city of more than two thousand inhabitants may try any and all cases which he is otherwise entitled to try and may hold his court for the trial thereof **and have his office anywhere within the corporate limits of the said city or town.. .**" (Emphasis added).

While reasonable zoning ordinances are uniformly upheld, any provision in an ordinance which conflicts with a State statute must give way to the extent of the conflict. Local ordinances and State statutes may, and often do, complement, support, implement and strengthen one another. Opinion No. 63-40. However, a municipal ordinance cannot forbid that which a State statute expressly permits. Opinion No. 62-5.

Since Section 36-2-8, supra, specifically provides that a justice of the peace may have his office **anywhere** within the corporate limits of the city, this provision controls over a municipal ordinance zoning an area as residential only. Words used in a statute are to be given their ordinary and usual meaning unless a different intent is clearly indicated. **State ex rel. State Highway Commission v. Marquez**, 67 N.M. 353, 355 P. 2d 287; **State v. Martinez**, 48 N.M. 232, 149 P. 2d 124. No such contrary intention appearing in the statute here considered, we look to Webster's New Collegiate Dictionary and find the word "anywhere" to be defined as follows: "in or to any place or point."

We would also point out that a justice of the peace is not engaged in a commercial enterprise. His powers and duties in the administration of justice are prescribed by the legislature and supervisory control over such judicial officers rests in the Court Administrator and the Supreme Court. Accordingly our answer to your first {267} question is "yes."

In your second question, you ask about the size of the sign that you may place on the residential premises where you have your office. Your sign may be the maximum size that is prescribed by the Court Administrator pursuant to his authority under Section 36-19-19, N.M.S.A., 1953 Compilation (P.S.). This is true notwithstanding any ordinance to the contrary under the rationale above discussed. The Court Administrator's regulation on this matter will be made in a few days.

In your third question you ask whether constables may carry firearms. Article VI, Section 26 of the New Mexico Constitution provides that "constables shall be elected in and for such precincts or districts as are or may be provided by law." There certainly can be little doubt that a constable is a peace officer. Sections 39-1-1 through 39-1-9, N.M.S.A., 1953 Compilation makes this clear. And the Criminal Code, Laws 1963, Chapter 303, Section 7-2 makes it an offense to carry firearms under certain conditions. One exception, however, is for "a peace officer in the lawful discharge of his duties." Hence our answer to your third question is in the affirmative.

By: Oliver E. Payne

Assistant Attorney General