

Opinion No. 47-4999

March 18, 1947

BY: C. C. McCULLOH, Attorney General

TO: Mr. Richard F. Rowley, Assistant District Attorney, 9th Judicial District, Clovis, New Mexico

{*22} We wish to acknowledge receipt of your inquiry of the 13th instant, wherein you questioned whether or not a renter who moved out of a private home without paying his rent, could be prosecuted, in accordance with the provisions of Section 41-2116 of the 1941 Compilation, if there had been no posting, as provided for in Section 41-2117, 1941 Compilation.

It is my opinion that Section 41-2116 of the 1941 Compilation is not broad enough in the first instance to cover your factual situation, as this section applies only to hotels, inns and boarding houses.

An owner of a private home who rents a room does not come under the protection of the aforementioned section, as the owner is not conducting a hotel, inn or boarding house.

However, before the owner of a {*23} hotel, inn or boarding house could successfully prosecute a former roomer, the notice provided for in Section 41-2117 of the 1941 New Mexico Compilation would have to be posted.

In 46 C. J. 552, it is stated that "Whenever by statute or ordinance a duty is imposed on an individual, for the neglect of which he is subject to a penalty, notice is required before liability arises, unless the contrary is expressly provided by law. * * *" See also Brewster v. City of Newark, 11 N. J. Eq. 114.

Trusting that the aforementioned satisfies your inquiry, I am

By ROBT. V. WOLLARD,

Asst. Atty. General