

Opinion No. 55-6172

May 26, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: J. V. Coan, Small Claims Judge, Bernalillo County Court House, Albuquerque, New Mexico

You ask whether or not service of process from the Small Claims Court of Bernalillo County would be valid if served outside of said County.

Section 16-5-1, N.M.S.A., 1953, provides as follows:

"In every county of this state having a population of over 50,000 persons, as shown in the 1950 United States Census, there is hereby created a small claims court, a court of record, designated as the 'Small Claim Court for ____ County,' with general **civil jurisdiction co-extensive with the county**, in all civil causes in which the matters in controversy shall not exceed in value the sum of \$ 2,000.00, exclusive of interest; . . ."

This section, as I read it, shows a legislative intent to create a county court with limited jurisdiction.

By the great weight of authority the jurisdiction of courts having limited jurisdiction is to be strictly construed. In addition, the following is cited from 72 C.J.S., page 1035, Section 32 (Process):

"The place where process may be served must be that permitted by the common law except as changed by statute; and subject to such exceptions as may have been made by valid statutory provisions, the general rule is that process cannot be lawfully served outside the territorial limits of the jurisdiction of the court from which it issues, and this is true regardless of the residence or citizenship of the party thus served, although the rule does not apply where defendant has agreed in advance to accept or does in fact accept some other form of service as sufficient. There must be actual service within the proper territorial limits on defendant or some one authorized to accept service for him."

As can be seen, process cannot be lawfully served outside the territorial limits of the court unless it can be said that the statute by which the court was created and is operating changed this general rule.

Section 16-5-10, N.M.S.A., 1953, provides, among other things, that the Rules of Civil Procedure for district courts of this state shall govern in all cases and trials in small claims courts. Also Section 16-5-11, N.M.S.A., 1953, provides that Rule 4 (g) [21-1-1 (4) (g)] of the Rules of Civil Procedure for district courts of this state can be utilized when the party to be served has removed from the state or cannot be found therein.

It is strange that the Legislature added this latter section since it had provided in the previous section that the Rules of Civil Procedure would apply in all instances and, of course, Rule 4 (g) is found therein. It must have only intended that the Rules of Civil Procedure were to apply generally to aid in the speedy, efficient dispatch of the small claims court's business but that when it came to jurisdiction for purposes of issuing process the original venue of the Court was not to be exceeded except in cases where Rule 4 (g) was applicable. To hold otherwise would in effect give the small claims court state-wide jurisdiction which is, in our opinion, contrary to the basic intent of the Legislature in establishing this court.

It is, therefore, our opinion that service of process issued from the Small Claims Court of Bernalillo County is valid only if served upon a party within said County, except in those instances where Rule 4 (g) is applicable.

By J. A. Smith

Assistant Attorney General