

## **Opinion No. 88-36**

May 25, 1988

**OPINION OF:** HAL STRATTON, Attorney General

**BY:** Scott Spencer, Assistant Attorney General

**TO:** Thomas A. Rutledge, District Attorney, Fifth Judicial District, Carlsbad, New Mexico 88220

### **QUESTIONS**

- (1) Can a Magistrate Judge perform a marriage ceremony outside of his district?
- (2) Can a Municipal Judge perform a marriage outside of the municipality in which he sits?

### **CONCLUSIONS**

- (1) No.
- (2) No.

### **ANALYSIS**

(1) Initially, we note that magistrate judges clearly have statutory authority to perform marriage ceremonies. Article VI, section 26 of the New Mexico Constitution states, in part, that the "legislature shall establish a magistrate court to exercise limited original jurisdiction as may be provided by law." In accordance with this mandate, Section 35-1-1 NMSA 1978 establishes "the magistrate court of limited original jurisdiction within the judicial department of the state government." Subsection 40-1-2B NMSA 1978 states: "Judges, justices, and magistrates of any of the courts established by the constitution of New Mexico and laws of the state are civil magistrates having authority to solemnize contracts of matrimony." § 35-3-6A NMSA 1978 (1987 Supp.) states, in part: "The territorial jurisdiction of a magistrate is coextensive with the magistrate district in which he serves...." Although no New Mexico authority is on point, cases from other jurisdictions hold that judges, justices and magistrates do not have the authority to perform marriages outside of the territorial jurisdiction in which they serve. *Ravenal v. Ravenal*, 72 Misc. 2d 100, 338 N.Y.S.2d 324 (1972). See, e.g., *Helfond v. Helfond*, 53 Misc. 2d 974, 280 N.Y.S.2d 990 (1967). We believe that the logic of these cases is equally applicable to New Mexico magistrates, and conclude that their authority to perform marriage ceremonies is so limited.

(2) Unlike magistrate courts, the New Mexico Constitution does not expressly create municipal courts. However, Article VI, section 1 provides, in part, that "[t]he judicial

power of the state shall be vested in the ... magistrate courts and such other courts inferior to the district courts as may be established by law from time to time in any district, county or municipality of the state." Section 35-14-1A NMSA 1978 (1987 Supp.) states, in part, that "[t]here is established a municipal court in each incorporated municipality. The municipal courts shall be presided over by municipal judges." Pursuant to Section 40-1-2(B) NMSA 1978, municipal judges are authorized to perform marriage ceremonies.

Section 35-14-2A NMSA 1978 establishes municipal court jurisdiction: "Each municipal court has jurisdiction over all offenses and complaints under ordinances of the municipality and may issue subpoenas and warrants and punish for contempt." This subsection limits the municipal court's jurisdiction to "ordinances of the municipality." This office has previously opined that a municipal judge's jurisdiction extends only to offenses committed within the limits of the particular municipality in which that judge sits. Att'y Gen. Op. 62-141 (1962).<sup>1</sup> Additionally, where the legislature has specifically conferred jurisdiction on a court, the doctrine of "expressio unius est exclusio alterius" suggests that all omissions of jurisdiction should be understood as exclusions. See *American Automobile Ass'n. v. Bureau of Revenue*, 88 N.M. 148, 149, 538 P.2d 420, 421 (N.M. App. 1975); cf. *Bottijliso v. Hutchison Fruit Co.*, 96 N.M. 789, 794, 635 P.2d 992, 997 (1981)

For these reasons, it is our opinion that a municipal judge's authority to "solemnize contracts of matrimony" is limited to the particular municipality in which that judge sits.

## **ATTORNEY GENERAL**

HAL STRATTON Attorney General

## **GENERAL FOOTNOTES**

[n1](#) The New York Attorney General has held that a municipal court justice or judge may not solemnize a marriage outside the territorial jurisdiction in which he was elected or appointed. 1972 Ops. N.Y. Att'y Gen. Aug. 15 (informal).