Opinion No. 16-1830

June 17, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. C. C. Conrad, Tyrone, New Mexico.

Justices of the peace need not await pleasure of district attorney in holding a preliminary examination in a felony case.

OPINION

*{*392}* I have received your letter of the 14th instant asking me whether a justice of the peace must await the pleasure of the county attorney in order to hold a preliminary examination in a felony case, and also whether a justice of the peace should not give the accused party an examination as soon as possible, instead of keeping him in confinement or under bond until the county attorney is ready.

The law as to such preliminary examinations is to be found in Sections 3260 to 3266 of the Codification of last year, a copy of which ought to be in the office of your justice of the peace, and there is nothing in those sections requiring a justice of the peace to wait for anybody. There is, however, in Section 1861, a provision that the district attorney may appear and represent the county or the state in any matter arising before the courts of justices of the peace or committing magistrates when, in his opinion, the interests of the people demand his services. In any case where he should be of opinion that the interests of the people demand his services, a justice of the peace would be justified in delaying the examination for a reasonable length of time to enable the district attorney to attend, and I think it would be his duty to do so. I do not think that he ought to delay the hearing indefinitely or without some good reason, but I do not see how it is possible to lay down any general rule which would fit the varying circumstances *{*393}* of all cases. The justice of the peace must exercise a reasonable judicial discretion. If there should be any abuse of such discretion the remedy would be by application to the district court for a writ of habeas corpus or for a writ of certiorari to review the proceedings of the justice of the peace.