

Opinion No. 19-2416

October 29, 1919

BY: O. O. ASKREN, Attorney General

TO: Hon. O. A. Larrazolo, Governor of New Mexico, Santa Fe, New Mexico.

Right of Governor to Declare Martial Law.

OPINION

Section 4 of Article V of the Constitution, which defines the powers of the Governor, is very similar to the provisions of the Colorado constitution setting forth the powers of the Governor of that State, and no doubt you have the right to declare certain portions of our State to be in a state of insurrection, and therefore placed under martial law.

The recital in your proclamation establishing martial law in a certain locality that a state of insurrection exists there cannot be controverted by **habeas corpus**.

The militia, in suppressing an insurrection under your orders, may, without turning them over to civil authorities, have them detained as insurrectionists, and those aiding and abetting them, until the insurrection is suppressed.

These views are supported by Re Charles H. Moyer, 12 L. R. A., N. S. page 979.

The entire subject is discussed in an early Pennsylvania case, Commonwealth ex rel. Wadsworth vs. Shortall, 65 L. R. A. 193.

These two authorities, with the notes thereunder, show that the Governor has almost unlimited authority to suppress insurrection and maintain public peace when in his judgment in certain localities matters have become beyond the control of the local civil authorities, and the Governor himself is the judge as to the local condition.

In time of strikes, if the facts justify it, the civil authorities may prosecute under the following statutes:

Sections 1766 to 1773, Compiled Laws of 1915, which cover the subject of Vagrancy; also sections 1690 to 1699, which cover the subject of Riots; and Chapter 140, Laws 1919, which covers the subject of Inciting Revolution.