

Opinion No. [30-34]

February 12, 1930

BY: J. A. MILLER, Assistant Attorney General

TO: Mr. E. L. Garvin, District Court Commissioner, Estancia, New Mexico.

JUSTICE OF THE PEACE -- As District Court Commissioner.

OPINION

I have yours of the 10th inst. in which you ask as to where or how you may be able to procure a copy of the Session Laws of 1929 or a copy of the bill creating the office of District Court Commissioner.

The District Court Commissioner is provided for by section 4 of chapter 37 of the Laws of 1929, which is the prohibition act. I do not know how it comes that you have not been provided with a copy of these Session Laws inasmuch as you say you are a Justice of the Peace and have been for a number of years. It is suggested that you write to Mrs. E. A. Perrault, Secretary of State, requesting a copy of the Session Laws of 1929. It may be that she will send you a copy without charge, if not, I am of the impression you may purchase a paper bound copy from her for \$ 2.50, which would probably be less than she would have to charge you for a certified copy of House Bill No. 224, which is the act in question.

You mention a special case in which one Tom Eldridge has been arrested on a charge of violating the prohibition act. You do not say whether he is charged with the violation of the national prohibition act or the state law, but you do say he was arrested by a prohibition officer and that he gave bond for his appearance. If arrested by a prohibition officer, I assume that it was on a charge of having violated the national prohibition act in which case he should have been taken before the nearest U.S. Commissioner and in which case you would have nothing to do in the matter either as justice of the peace or as district court commissioner.

By section 4 of chapter 37, Laws of 1929, which, as above stated, is the act creating the office of district court commissioner, such commissioners are empowered to issue search warrants in accordance with the provision of this act and the commissioners have the same powers to hold preliminary hearings and act therein as committing magistrates in connection with the provisions of the act as are now prescribed for justices of the peace in all criminal cases of this state. The District Court Commissioner has no jurisdiction to try offenses under the prohibition act of the state or under any other act. He simply sits as a committing magistrate in prohibition cases brought under the state law and has no jurisdiction whatever under the national prohibition act. Neither can you, as justice of the peace, act in any other capacity than that of a committing

magistrate under the state prohibition law in that all penalties provided are beyond the jurisdiction of a justice of the peace.