

Opinion No. 33-565

March 25, 1933

BY: QUINCY D. ADAMS, Asst. Attorney General

TO: Honorable Arthur Seligman, Governor of New Mexico, Santa Fe, New Mexico.

{*32} This is in reply to your inquiry concerning the nature of contempt proceedings to enforce the payment of alimony. You wish to know if a person found guilty of contempt of court for failure to pay alimony and sentenced to imprisonment is guilty of a felony, and whether or not he thereby loses his right of citizenship.

I am of the opinion that such an offense is not a felony. It constitutes what is known as "civil contempt" which includes these proceedings in the nature of contempt instituted to preserve and enforce the rights of private parties to suits and to compel obedience to the orders of the court which are made to enforce its rights. State vs. Magee Pub. Co., 29 N.M. 355, 224 P. 1028.

Section 35-103 of the 1929 Code defines a felony as a "**public** offense punishable with death or which is or in the discretion of the court, may be punishable by imprisonment in the penitentiary; or any other **public** offense which is or may be expressly declared by law to be a felony." I do not believe that contempt of the character here involved is a **public** offense within the meaning of the above statute. While there is no statute expressly limiting the time for which a person may be imprisoned for contempt it is questionable whether or not a court can cause a person to be imprisoned in the penitentiary for such an offense.

In Section 34-105 of the 1929 Code with reference to contempt (probably criminal contempt) it is stated that the courts shall be "circumscribed by the usage of the courts of the United States." In the case of In Re Acker (U.S.) 66 Fed. 290, it is held that contempt of court is not a felony under the laws of the United States.

For all of the foregoing reasons I am of the opinion that the person referred to has not lost his right of citizenship by virtue of any order of the court adjudging him guilty of contempt for failure to pay alimony.