

White
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February 11, 1955
Letter Opinion
No. 55-24-1

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ARIZONA ATTORNEY GENERAL

The Honorable Robert A. Petrie
State Representative, Maricopa County
House of Representatives
State Capitol
Phoenix, Arizona

Re: Establishment of a Superior
Courthouse in Mesa.

Dear Mr. Petrie:

This has reference to your verbal request for an opinion by this office as to whether the Maricopa County Board of Supervisors may legally establish a branch superior courthouse in Mesa, Arizona.

Section 5, Article 6, of the Arizona State Constitution provides that there shall be in each of the organized counties of the state, a superior court; and Section 25, Article 6, of the Constitution, adopted in November, 1948, provides as follows:

"§ 25. (Superior courts constitute single court.)
--The superior courts provided for in this article are hereby declared to be a single court of the state of Arizona, composed of all the duly elected or appointed and qualified judges of the superior court in each and all of the counties of the state."
(Emphasis supplied)

The terms "courthouse site" and "county seat", in their ordinary use, mean the same thing. The term "county seat", in common parlance, applied to government, simply designates the town or city where the seat of the government is, for the time, established.

Our statutes which provide that county seats may be changed by a vote of the electorate, also provide that the city or town placed on the ballot must designate a site for a proposed courthouse. (Section 17-1305, A.C.A. 1939) The same procedure applies when new county seats are created by a vote of the electors under the terms of our statutes.

Section 17-309, A.C.A. 1939, setting forth the powers of the board of supervisors, states in part:

"17-309. Powers of board.--(a) The board of supervisors, under such limitations and restrictions as are prescribed by law, may:

* * * * *

8. Cause to be erected and furnished a courthouse, jail, hospital and such other buildings as necessary * * *"

* * * * *

The place of holding superior court is set forth in section 19-305, A.C.A. 1939, which reads as follows:

"19-305. Place of holding court--Provision therefor. -- The sessions of the superior court shall be held at the county seat; if a room for holding the court be not provided by the county, together with the attendants, fuel, lights, and supplies, suitable and sufficient for the transaction of business, the court may direct the sheriff to provide the same and the expenses thereof shall be a county charge."

The only exception to the performance of duties of county office at other than at the county seat is set forth in Section 17-506a, A.C.A. 1939, as amended, as follows:

"17-506a. Performance of duties of county office at places other than the county seat.--Whenever in the opinion of the chief officer of any county office, the public interest requires the performance of any of the duties of said office at a city or town having a population of more than two hundred (200) people and which city or town is more than thirty (30) miles distant from the county seat, said duties may be performed at said city or town by a duly appointed and qualified deputy of such county officer, in the same manner, and with like effect as if performed at the county seat. All records of such acts shall be filed in the office of the county officer at the county seat."

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There are only two exceptions found in our statutes authorizing the superior court to hold sessions at a place other than the county seat. The first is found in Section 19-306, A.C.A. 1939, providing that in certain instances the Superior Court of Pima County may hold sessions of said court at Ajo, and Section 19-307, A.C.A. 1939, provides that all records of the Superior Court shall be maintained and kept in Tucson, Arizona, the County Seat of said county, including the sessions held at Ajo.

The second exception is found in Section 8-304, A.C.A. 1939, as amended, 1951, which provides in part, with reference to the hearing of the petitions for commitment of mentally ill persons, that:

"8-304. Detention and delivery of copy of petition, order and notice.-- * * * The notice shall fix the time and place for hearing, which shall be open to the public and either in the courtroom or such other place within the county as the court shall designate, to insure humane treatment with due regard to the comfort and safety of the alleged mentally ill persons and others.* * *"

It is, accordingly, the opinion of this office that the Board of Supervisors of Maricopa County does not have authority to legally establish a branch superior court in Mesa, Arizona, under the statutes now in effect.

It is the opinion of this office, however, that proper legislation could be drafted to enable the Superior Court to sit at places other than county seats.

Very truly yours,

ROBERT MORRISON
The Attorney General

By:

NEWMAN W. WHITE
Special Assistant to
The Attorney General

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