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December 12, 1955  
Opinion No. 56-7

REQUESTED BY: Al J. Flood, Justice of Peace

OPINION BY: ROBERT MORRISON, The Attorney General  
James H. Green, Jr., Special Assistant  
Attorney General

QUESTION: May a Justice of the Peace give a directed verdict in a case where a jury has been empaneled?

CONCLUSION: Yes.

A Justice of the Peace is not specifically authorized to grant directed verdicts nor is he specifically prohibited from doing so. Section 21-1015, ACA, 1939, provides for a directed verdict in civil cases in the superior courts. Section 44-1835, ACA, 1939, provides for directed verdicts in criminal cases in superior courts. Section 20-708, ACA, 1939, provides as follows, in part:

"The law governing the procedure in the superior courts regarding . . . and all other laws of procedure, so far as applicable and not otherwise especially prescribed, shall govern the procedure in justice of the peace courts."

It would appear, then, that under Section 20-708, ACA, 1939, the rules of the superior court would be followed to permit the granting of a directed verdict by a justice court. This view is strengthened by a recent decision of the Arizona Supreme Court in Fovargue v. Singer, 77 Ariz. 305, 270 P.2d 1090, where the Court spoke of Section 20-708, ACA, 1939, at page 308:

"The legislature has provided in Section 20-708, A. C. A. 1939, that 'The law governing the procedure in the superior courts regarding \* \* \* judgments \* \* \* and all other laws of procedure, so far as applicable and not otherwise especially prescribed, shall govern the procedure in justice of the peace courts.' There is no special law governing the effect of dismissals in the justice courts, hence the rules of civil procedure for the superior courts are to be applied."

In addition, Section 44-3211 contains the following provision for justice courts:

"The court must decide all questions of law which may arise in the course of the trial, but can give no charge with respect to matters of fact."

A motion for a directed verdict has been held to be a "question of law". Applequist v. Oliver Iron Mining Co., 296 N. W. 13; Zator v. Cummings, 42 N. E. 2d 858.

It may be concluded, therefore, that a justice court may render a directed verdict on the general ground of following the procedure of the superior court and on the specific ground that the justice of the peace is authorized to decide questions of law. Since the justice of the peace is prohibited by Section 44-3211, ACA, 1939, from giving a charge with respect to matters of fact, great care should be exercised to determine that the motion for a directed verdict presents only a question of law and not one of fact or mixed law and fact.

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