

GRAND JURIES: A Grand Jury selected for the September,  
CITY OF ST. LOUIS: 1952, Term of the Circuit Court cannot  
legally be continued into or for the  
December, 1952, Term of said Court.



November 24, 1952

11/26/52

Mr. John J. Kelly, Jr.  
First Assistant Circuit Attorney  
Municipal Courts Building  
St. Louis, Missouri

Dear Sir:

This will acknowledge receipt of your request for an official opinion, which request reads:

"Pursuant to the provisions of Sec. 27.040 Revised Statutes of Missouri, 1949, on behalf of the Office of the Circuit Attorney for the City of St. Louis, Missouri, I wish hereby to request an opinion of your office relative to the following matters:

"1. may a Grand Jury impanelled by the presiding judge in the Assignment Division of the St. Louis Circuit Court for Criminal Causes in one term of Court be legally continued into the following term for the purpose of completing an investigation begun during the term for which it was impanelled?

"2. if said Grand Jury may be so legally continued into the following term, what legal technicalities must be complied with?

"Due to the fact that these questions now confront us in an investigation now being conducted by the current Grand Jury in the City of St. Louis, and since the term of this Grand Jury will expire on the 28th day of November, 1952, it is particularly urgent that an opinion be forthcoming as quickly as possible."

The purposes for which terms of court were abolished by the so-called "New Civil Code of Practice and Procedure", Chapter 506, RSMo 1949, does not apply to criminal matters. Section 506.020 provides:

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"This code shall not apply to practice and procedure in criminal cases except to the extent that its provisions or any of them are now or hereafter may be made applicable by statute. If it occur that inadvertently this (civil) code may affect any change in the practice and procedure in criminal cases as the same exists at the time of the passage of said code, the supreme court shall and is hereby directed to immediately promulgate a rule restoring such a provision or provisions of said criminal practice and procedure to the end that the present practice and procedure in criminal cases shall not be changed except by a legislative act passed for that specific purpose."

Furthermore, the provisions of the Code provide for terms and their duration. Section 506.070 states:

"Every term of court shall commence and convene by operation of law at the time fixed by statute without any act, order, or formal opening by a judge, the judges, or other officials, and shall continue to be open at all times until and including the day preceding the next regular term on which day it shall expire by operation of law."

This section is cited for the purpose of showing the illegality of continuing a term by the old method of "stopping the clock."

Under Section 506.070, RSMo 1949, the present September, 1952, term of the Circuit Court in the City of St. Louis, as established by Section 478.230, RSMo 1949, will expire for all purposes on November 30, 1952.

We believe the method provided by law for the creation of a Grand Jury Wheel and the procedure established for the selection of a Grand Jury therefrom prohibit the continuing over to another term a Grand Jury selected for the preceding term of the Court. Section 498.290, RSMo 1949, provides the method of placing names in a Grand Jury Wheel:

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"1. The circuit judges in general term shall select the names of six hundred persons, known or believed by them to be in every way fitted for grand jury service, said selection to be repeated whenever deemed necessary by said judges of the circuit court, which names shall, by said judges, be erased from the petit jury lists in the said board of jury supervisors office, or caused by them to be erased by said jury commissioner, but by them to be deposited in a special grand jury wheel, which, after being properly secured, shall be delivered to the care of the jury commissioner of the board of jury supervisors, who shall be responsible for the proper custody of the same, and which after the names are once placed therein, shall be opened and drawn only, by said jury commissioner, or one of his deputies, in the presence of two or more of said circuit judges, upon the requisition of the judge of the criminal division of the circuit court for such number of grand jurors as may be required for any one term in said court." (Emphasis ours.)

Section 498.300, RSMo 1949, prescribes the method of selecting the personnel of a Grand Jury and its term of service. Said section reads:

"The number of names of grand jurors to be thus drawn from said special grand jury wheel shall not be less than twenty-four for any one term of said criminal division of the circuit court, but may be increased by the judge of said court, as special circumstances may require. From the names thus drawn, the judge of the criminal division of the circuit court, shall select twelve grand jurors who shall serve for the current term of said court, and the names of such persons that have been drawn, but not selected to serve by said judge, shall be returned to the special grand jury wheel by the jury commissioner of the board of jury supervisors, in the presence of one or more of said circuit judges, immediately after the term for which they were drawn." (Emphasis ours.)

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Also, in connection with establishing a division or divisions of the circuit court to handle criminal matters, Section 478.417, RSMo 1949, provides in part the following in connection with a Grand Jury:

"4. A grand jury shall be summoned each term to attend upon such division assigned to criminal business as said circuit court in general term shall direct. It shall be charged with regard to its duties by the judge of said court sitting in said division, and it shall return all indictments by it found, and deliver all reports by it made into said division."

(Emphasis ours.)

We believe it is apparent from these three sections, and especially the underlined parts, that a Grand Jury must be selected as provided and its tenure is limited to the term for which it was drawn, so that a jury selected for a term of court in any manner other than that provided by the statute (such as selecting a Grand Jury for a term by continuing over the one selected for the previous term) would be illegally constituted.

We do not find any cases on this proposition, but we think the statute is clear, which probably accounts for the absence of court decisions.

In addition to the foregoing, Section 498.270, RSMo 1949, provides:

"No person shall be required to serve as a juror, either grand or petit, more than once in any period of twelve months, from the time of his previous service."

This section was construed in the case of Williamson v.

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Transit Company, 202 Mo. 345, as conferring a personal privilege to a juror, who has served within twelve months, to be excused. At the time of this decision, there was in operation another section of the statute which made such service a ground for challenge, Section 6547, RSMo 1890 (now repealed). The Court held they were not conflicting and said, l.c. 368:

"While section 6567 of said article provides that, 'No person shall be required to serve as a juror, either grand, petit or special, more than once in a year,' there is nothing in either section 6547 or section 6554 which makes it the duty of any court of record to excuse from service as a juror any person who has served as such during the year in which the case is being tried, nor which prohibits the summoning of such person as a juror, but by the express provision of section 6547 the time within which a person summoned as a juror may be challenged on account of having served upon a jury is twelve months next preceding the time of the trial. These sections are, therefore, not in conflict, and section 6547 is controlling. Moreover, section 6567 seems to confer upon a person summoned as a juror, and who has rendered service as such the same year, the personal privilege of claiming exemption from jury service upon that account, but there is nothing in the article which forbids the summoning of such person as a juror. \* \* \* "

See also Blyston-Spencer v. United Rys. Co. of St. Louis, 152 Mo. App. 118, 132 S.W. 1175; Turney v. United Rys. Co. of St. Louis, 155 Mo. App. 513, 135 S.W. 93.

We are of the opinion that this section confers only a personal privilege to a juror and is not in point on your question, but was cited and discussed to eliminate it from consideration.

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CONCLUSION

It is therefore the opinion of this department that the present Grand Jury, constituted by the Circuit Court of the City of St. Louis for the September Term of 1952, will cease to exist as of November 30, 1952, and that it cannot legally be continued as a Grand Jury into or for the December, 1952, term of said Court.

Respectfully submitted,

W. BRADY DUNCAN  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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