

CIRCUIT JUDGE: Exercises same powers as a member of the county court as jury commissioner.

August 26, 1941

Honorable Randolph H. Weber
Attorney at Law
Poplar Bluff, Missouri



Dear Sir:

We are in receipt of your request for an opinion, dated August 22, 1941, as follows:

"Mr. Charles T. Bloodworth, Jr., Prosecuting Attorney of Butler County, Missouri, is temporarily out of the County and I am acting as his duly appointed assistant for that period.

"The County Court, and others interested, have asked for an opinion in interpretation of Section 13394 of the Revised Statutes of Missouri for 1939, relating to Circuit Judges being Jury Commissioners in Circuits of two or more counties where there is one Circuit Judge.

"The exact question raised and the point an opinion is desired on, is just what are the duties of the Circuit Judge in such Circuits, as defined by the Statute? Does the wording 'assist the County Court in preparing the list as provided in Sections 705 and 706', mean, that the Circuit Judge helps to prepare the list, submits names, and votes thereon? Or does it mean that he acts in a supervisory capacity to see that the County Court properly follows out the provisions of those sections? If he does have a voice in the selection of the list and the names to be put therein, does he have a vote on the selection of those names?

"As you know, there are three Judges of the County Court, and if the Circuit Judge has a vote under Section 13394, there can be a possibility of a divided vote of the court (2 and 2) and in that event what would be the proper procedure and action in the selection of names for the jury list?"

Section 13394, R. S. Mo. 1939, is as follows:

"In all counties in this state which now constitute, or may hereafter constitute, a separate judicial circuit with only one judge of the circuit court therein, the judge of such circuit court is hereby constituted a jury commissioner, whose duties as such commissioner shall be to assist the county court to prepare jury lists and to draw names as provided for in sections 705 and 706 Revised Statutes 1939. Each such jury commissioner shall, as compensation for his services as jury commissioner solely, as provided in this section, receive a salary of twelve hundred dollars per annum, said salary to be paid by the county in equal monthly installments. In all judicial circuits in this state which circuits are constituted of two or more counties the circuit judge is hereby constituted a jury commissioner charged with the powers and duties herein prescribed, and for the performance of said duties he shall receive a salary of \$1300.00, per annum, to be paid in equal monthly installments out of the State Treasury."

Sections 705 and 706, R. S. Mo. 1939, to which the foregoing section refers, set out the duties of the county court with regard to the preparation of the jury list, and are as follows:

"Sec. 705. The county court of each county at a term thereof not less than thirty days before the commencement of the circuit court or other court having civil and criminal jurisdiction, or civil or criminal jurisdiction, shall select names of not less than four hundred persons having all requisite qualifications of jurors; and the court in selecting such names shall select, as near as practicable, the same number from each township in the county according to the relative population, and shall determine how many petit jurors and alternate petit jurors shall be selected from each township in said county and the names of such persons and the township from which they are selected shall be written on separate slips of paper of the same size and kind and all the names so selected from any one township shall be placed in a box with a sliding lid to be provided for that purpose and thoroughly mixed.

"Sec. 706. The clerk of the county court so situated as to be unable to see the names on such slips shall, publicly, in the presence of said court and in open court, proceed to draw out names separately and singly from one township until he gets the number of names required from such township for petit jurors and an equal number as alternate jurors to serve on petit juries if summoned; and in the same manner shall continue to draw names from each of the remaining townships, separately and singly, until he shall have drawn the names of twenty-four persons who shall serve as petit jurors at the next ensuing term of said court for which said petit jurors are drawn, and the names of twenty-four persons to be designated as alternate petit jurors, the names of said alternate petit jurors to be recorded and numbered consecutively

from one to twenty-four, inclusive, in the order in which they are drawn: Provided, that in all cases where the county court shall fail to select such jurors and alternates according to the provisions of articles 1 and 4 of this chapter the sheriff of the county shall summon such petit jurors from the several townships in the county, according to their respective populations, as nearly as may be, and not less than ten days before the first day of the term of the court for which such jurors are summoned; and the sheriff when ordered by the court demanding such jury shall summon petit jurors during such term from the bystanders, after the list of alternate petit jurors has been exhausted; and provided further, that no person shall be summoned as such standing juror twice within the period of one year in any court of record."

A reference to these latter sections does not clearly disclose the duties of the circuit judge as a jury commissioner since that term is not to be found in either of the two latter sections. We must, therefore, arrive at the intent of the Legislature as manifested by its use of the words "assist" and "jury commissioner."

In Webster's New International Dictionary "assist" is defined as, "To lend aid; to help." In Words and Phrases, Volume 4, we find the following definitions, page 551:

"To 'assist' is to lend aid to; to help.
Peabody v. Town of Holland, 178 A. 888,
889, 107 Vt. 237, 98 A. L. R. 866.

"*** To 'aid' or 'assist' is the doing of such an act whereby the party is enabled, or it is made easier for him, to do the principal act, or effect some primary purpose. Moss v. Peoples, 51 N. C. 140, 142."

It is apparent from the foregoing definitions that the Legislature intended that the circuit judge, as jury commissioner, act in a capacity similar to that of the members of the county court since any real assistance could be given only by actual participation in the action of the county court, as set out in Section 705, supra. The fact that the term "jury commissioner" is used bears out this view.

Section 766, of Article V, Chapter 5, R. S. Mo. 1939, makes provision for the appointment of a jury commissioner in cities having more than 100,000 inhabitants.

Section 773, R. S. Mo. 1939, provides that the jury commissioner shall visit every house within the limits of the city for which he is commissioner, and take down the name, occupation and place of residence of every person residing in the city who is qualified for jury duty.

Under Section 781, R. S. Mo. 1939, the sheriff, or other officer, obtains a number of names from the jury commissioner, which are placed in a wheel and drawn, as provided in that statute.

Under Section 799, Article VII, Chapter 5, R. S. Mo. 1939, the circuit judges and judges of the court having criminal jurisdiction in counties having not less than 200,000 or more than 400,000 inhabitants constitute a board of jury commissioners. The duties of this board, as set out in Section 800, R. S. Mo. 1939, are to compile a list, alphabetically arranged, of all the qualified jurors in the county with their respective residences.

In each instance, where the Legislature has used the term "jury commissioner," where the duties of such officer are defined, that person selects the names of the properly qualified citizens from which the petit jury panel is drawn.

We must, therefore, arrive at the conclusion that the Legislature viewed each member of the county court, under Section 705, as a "jury commissioner" and intended the circuit judge to occupy a similar position, having the same right to submit names of persons who, in his opinion, are qualified jurors, and the further right to actually

vote for his choice of said persons. These are the duties enjoined on the county court by Section 705, and the sole duty of the circuit judge, as jury commissioner, under Section 706, is to sit with the county court when names are drawn from the prepared list publicly and in the presence of the county court in session.

In answer to the second proposition presented in your request, that of a possible tie vote on the name of any proposed juror to be placed on the eligible list, we fail to find any statute which directly governs, and, therefore, make reference to the general principles of parliamentary procedure in Cushing's Law and Practice of Legislative Assemblies. We find the direct answer to your question in the following language, l. c. 167:

"The rule of decision, in all councils and deliberative assemblies, whose members are equal in point of right, is, that the will of the greater number of those present and voting, -- the assembly being duly constituted, -- is the will of the whole body. Hence whatever is regularly agreed upon by a majority of the members of a legislative assembly is a thing 'done and past' by that body. Where the assembly is equally divided, there is, of course not a majority in favor of the proposition, which is put to vote, and that proposition is consequently decided in the negative."

The principle of majority rule has always been followed in the United States. (See Hughes' American Parliamentary Guide) Clearly, therefore, any person whose name is proposed for the jury list, who does not receive a majority of the votes cast, cannot be placed on the eligible list from which the juries are selected.

CONCLUSION

It is the conclusion of this department that the duties of the circuit judge as jury commissioner, where he is judge of

Hon. Randolph H. Weber

-7-

August 26, 1941

two or more counties in a circuit, require him to sit with the county court in the selection of the list of qualified jurors from which the petit jurors and their alternates are to be drawn, with the same powers with regard to the selection of persons appearing on said list as that possessed by any member of the county court under Section 705, R. S. Mo. 1939, and he is required to sit with the court when the names are publicly drawn in open court by the county clerk.

It is further the opinion of this department that a majority of the votes cast must be favorable to any person offered for the eligible list before he is entitled to a place thereon.

Respectfully submitted,

ROBERT L. HYDER
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

RLH:VC