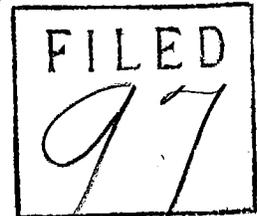


COUNTY COURT: The county and circuit courts may
JURY COMMISSIONERS: examine a poll book in preparing,
before selecting, persons qualified
to serve as jurors as provided in
Section 705 and Section 706 R. S. Mo. 1939.

March 14, 1941.

Honorable C. A. Wiegstein
Presiding Judge
Madison County
Fredericktown, Missouri

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Dear Sir:

This will acknowledge receipt of your request for an official opinion, under date of March 6, 1941, which reads as follows:

"It has been the common practice of the County Court of this County, in fulfilling his duties under Section 705 supra, to select the Four Hundred names to be placed in the box from which the names of petit jurors are drawn by first studying the various poll books of the County.

"At the February Term of the County Court of this County, while in conference with Hon. Frank Fenwick, Judge of the Circuit Court, I was informed that the use of the poll books for this purpose was unlawful. I have read the citations under the above section and also section 706 RSMO 1939, and I do not find where this point has been decided in any of our Appellant courts. I know that we are not allowed to select jurors from a list prepared by anyone else, but as the poll books do

not contain a list of names prepared by anyone and is a public record, I can see no reason for the law that the use of the poll books is unlawful.

"I would appreciate a letter of advice from you on your point at your earliest convenience.

"I remain"

Section 705, R. S. Mo. 1939, provides the manner by which the county court shall select persons qualified for jury service and reads as follows:

"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."

Section 13394, R. S. Mo. 1939, provides the circuit court shall constitute a jury committee in certain circuits and shall assist the county court in preparing jury lists and draw names as provided in Sections 706 and 707, R. S. Mo. 1939:

"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."

In construing statutory provisions, one of the cardinal rules of construction is to determine the intention of the legislature and to give it that construction if at all possible. (Wallace v. Woods, 102 S. W. (2d) 91, 340 Mo. 452.

Your request requires an inspection of the law pertaining to the possession of poll books and whether such records are public records and may be inspected by any one. Section 11614, R. S. Mo. 1939, requires one poll book to be delivered to the clerk of the county court, subject to the power of the county clerk to send the Sheriff for same if this is not done. This section further provides, that the other poll book shall be retained in the possession of the Judges of the Election, open to the inspection of all persons:

"At the close of each election the judges shall transmit one of the poll books by one of their clerks or by registered mail at their discretion to the clerk of the county court in the county in which the election was held within two days thereafter; if the poll books are not returned in the time provided the clerk shall have the power to either send the sheriff or a messenger for said books; the other poll book shall be retained in the possession of the judges of election open to the inspection of all persons: Provided, that if such poll books be transmitted by messenger, the county court shall pay such messenger for such service at the rate of ten cents per mile for each mile necessarily traveled, going and returning."

The county court, under Section 13775, R. S. Mo. 1939, shall direct the Sheriff of the county to burn the poll books but not until same have been filed for five years. Said section reads as follows:

"The county courts of the several counties in this state are hereby

authorized to direct the sheriff of their respective counties to destroy, by burning, during the session of and in the presence of the county court, the papers hereinafter designated, after a period of five years after the filing thereof, to wit: Assessment lists, dramshop petitions, dramshop receipts and statements, dramshop bonds, merchants' and manufacturers' statements, school enumeration lists, school estimates, poll books, annual settlements and bonds of road overseers, canceled county warrants, settlements of county treasurer, settlements of superintendent of poor farm, canceled school district warrants, justice of the peace papers, estray papers, appointments of deputies, reports and receipts of the collectors of the revenue, certificates of fines, statements of campaign expenses, quarterly statements of fees received by county officers, income tax reports, birth and death reports, settlements of village school district treasurers, road overseers' reports, road commissioners' reports, poll tax lists and accounts, and bills allowed against the county." (Underscoring ours)

Unquestionably it was the intention of the legislature in enacting such statutory provisions, to permit any person to examine the poll books and that said poll books shall not be destroyed for five years after same are filed. While we hesitate to disagree with the learned chancellor, we are unable to find anything in Section 705, supra, or any other statutory restriction placed upon the county and circuit court from examining a poll book before they select persons for jury service, nor are we able to conceive any valid reason why this should be criticized.

Hon. C. A. Wiegenstein

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March 14, 1941.

It appears to the writer that an examination of the poll book, by the county and circuit court before performing this statutory duty, would be very helpful to the court.

Respectfully submitted,

AUBREY R. HAMMETT, Jr.
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney-General

ARR:LB