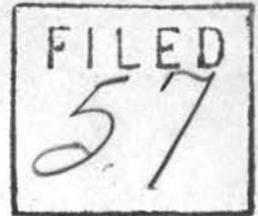


JURY: Board of jury commissioners may determine number of jurors to be selected from each township for jury panel.



November 18, 1948

11-19

Honorable Gordon J. Massey  
Prosecuting Attorney  
Christian County  
Ozark, Missouri

Dear Mr. Massey:

We have received your request for an opinion of this department which request is as follows:

"A question has arisen as to the distribution of those summoned for jurors in circuit court.

"We have 19 townships. Some do not have over 100 population and two or three have more than 1,000.00. The others vary. The law says the jurors shall be chosen according to population. Heretofore the court picking the jury has always taken at least one from each township regardless of population, and not to exceed two from some of the larger townships.

"If the selection is made on a prorata basis the larger townships will get as many as three or four and the smaller ones will only get one juror in a year. Please advise how the jury commission should fill the boxes from which the names should be drawn and the number from each township where the population varies as much as 10 to 1?"

Section 705, R. S. Mo. 1939 (Re-enacted Laws 1947, Volume II, page 276) contains the following provisions:

"The board of jury commissioners of each county 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 board of jury commissioners 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 townships 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 706, R. S. Mo. 1939 (Re-enacted Laws Mo. 1947, Volume II, page 276) contains the following provisions:

"The clerk of the board of jury commissioners, so situated as to be unable to see the names on such slips, shall, publicly, in the presence of said board of jury commissioners, 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:\* \* \*"

The method of selection provided in the above quoted sections was changed by the last session of the Legislature by providing that the selection of the jury list and panel should be made by a board of jury commissioners instead of the county court as formerly. Insofar as the number of names to be selected for the jury list and the method of apportioning such names is concerned, no change was made. The provision regarding apportionment was originally adopted in 1874 (Laws 1874, page 97, Section 2). The minimum number of names for the jury list has been increased since that time from one hundred and seventy-five to the present four hundred.

The courts of this state have held that the statutory procedure prescribed for the selection of names for the jury list, and persons for the jury panel, is directory, and, that, in the absence of a showing that one of the parties was prejudiced by reason of failure to adhere exactly to the statutory procedure, substantial compliance with the provisions of the statute is sufficient. *State v. Rouner*, 333 Mo. 1236, 64 S. W.(2d) 916, 92 A.L.R. 1099; *State v. May*, 172 Mo. 630, 72 S. W. 918.

Insofar as the question which you have presented is concerned, you will note that Section 705 requires the names selected for the jury list to be apportioned as nearly as possible among the various townships according to population. However, it further provides that the board of jury commissioners shall determine how many regular and alternate petit jurors shall be selected from each township but it does not require that they base such determination upon population. Undoubtedly, in most counties, population is the determining factor but in a county such as yours, with nineteen townships varying considerably in population, we perceive no reason for saying that the method heretofore used in selecting the panel should not continue to be followed. The jury commissioners should, of course, follow the statutory direction in regard to selecting names for the jury list insofar as practicable. For example, the number of names for a township with a population of one thousand should be ten times that for a population of one hundred, although two jurors and two alternates are to be selected from the former list and only one each from the latter. You will also note that the four hundred names required for the jury list is a minimum figure so that, if necessary, in order to effectuate the purpose of the statute, in a county such as yours, a larger number of names could be used and the requirement of apportionment according to population could be met.

#### CONCLUSION

Therefore, we are of the opinion that in selecting the petit jury panel in accordance with Section 705, R. S. Mo. 1939, (Re-enacted Laws 1947, Vol. II, page 274) the board of jury commissioners should obtain the required number of names for the jury list by apportionment among the various townships according to population, but that particularly in a county with a large number of townships, which vary widely in population, the board of jury commissioners may determine how many names should be drawn for each township and that in making such determination the board of jury commissioners need not do so solely on the basis of population. A system, whereby in your county, with nineteen townships, one regular and one alternate petit juror is chosen from each of the smaller

Hon. Gordon J. Massey

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townships and two from each of the larger townships until the required number is obtained, complies with the requirements of the statute.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR *JTB*  
Attorney General