

JURIES: Federal employes exempt from jury service when?

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May 23, 1936.

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Honorable Bert R. Mullen
State Administrator, ECW
617 Broadway
Columbia, Missouri

Dear Sir:

We are in receipt of your request for an opinion, dated May 16, 1936, which reads as follows:

"You may recall the writer talking to you relative to Government Employees, working in the CCC Camps of the State, serving on regular juries. It so happens that we have about one hundred seventy-five (175) men who are now on Civil Service status, and who are working in various CCC Camps over the State. These men are as a rule some distance from their homes, and occasionally one of them will receive a summons to appear at his home town as a juror. I should like an opinion from your office as to whether or not Civil Service Employees, on the above work status, are exempt from jury duty."

Section 8746 R. S. Mo. 1929, provides the general qualifications of jurors and reads:

"Every juror, grand and petit, shall be a male citizen of the state, resident of the county, sober and intelligent, of good reputation, over twenty-one years of age and otherwise qualified."

It is elementary law that the qualifications and exemptions of jurors are a matter of legislative control. In *State v. France*, 76 Mo. 681, 1. c. 682, the Supreme Court said:

"An objection was also made to W. B. Fortune and John V. Burgess, who had been summoned as petit jurors, on the ground that they had not resided in the State and county one year. Upon the voir dire examination of these persons touching their qualifications as jurors, it appeared that one of them had lived in the State and county of St. Clair about two months, and the other about five months, and that both of them had settled there with the intention of making their permanent homes in the county and State. This was all that is required by section 2777, Revised Statutes, which provides 'that every juror, grand or petit, shall be a male citizen of the State and resident of the county, sober and intelligent, of good reputation, over twenty-one years of age, and otherwise qualified.' "

Temporary absence from one's resident of one otherwise qualified as a juror does not disqualify one duly summoned as a juror. In *State v. Burns*, 148 Mo. 167, 1. c. 174; 49 S. W. 1005, our Supreme Court said:

"Equally groundless is the point that one of the panel of jurors was not a resident of the county. The testimony largely preponderated that he was a citizen of Scott county, had resided at Vanduser, had voted at the spring election in said county, and had expressed his intention to vote that fall at the general election in said county; that he was an old resident of the State."

The summons to appear for jury service is a prerequisite of the duty to serve. One not duly notified by statutory summons is not duly bound to appear, for without service of summons, as provided by law, one can not be bound to perform the duty of appearing to serve on a jury when he has no notice of his duty.

The statutory summons provided by law is set out in Section 8758, R.S. Mo. 1929, and reads:

"The names of the persons so drawn shall be recorded by the county clerk in the records of the county court, and he shall as soon thereafter as practicable deliver to the clerk of the court for which such jury is drawn a certificate thereof, who shall record the same in a book to be provided for that purpose. And the clerk of the court for which the jury is drawn shall immediately thereafter issue a summons to the sheriff of the county, directing him to summon the persons thus drawn as petit jurors to appear on such day of the term of such court as shall be named in such summons by the clerk of said court to serve as petit jurors; and it shall be the duty of the sheriff to make service of such process at least ten days before the first day of the term of court for which such persons are drawn, which summons shall be served by reading the same to the person so summoned or by leaving a copy of the summons at his usual place of abode with some member of the family over fifteen years of age, except in such cases as may be hereafter provided."

Certain persons who are otherwise qualified under the general provisions of the statutes may be exempt from jury service where the Legislature so provides. In Missouri there are exemptions provided for by statute.

Section 8748, 8803, 8818 R.S. Mo. 1929, and Laws of Missouri, 1931, p. 247, Sec. 10, all provide exemptions from jury service to persons who fall within a given group.

None of the provisions of exemption in sections 8748 and 8803, R.S. Mo. 1929, can be construed to include government employees in CCC camps with civil service standing.

Section 8818, R.S. Mo. 1929, relates only to juries in cities with over one hundred thousand inhabitants, and exempts from jury duty any person "who holds any office of profit or employment created by or authorized under the law of the United States, or of the State of Missouri, or the ordinances of the city."

Laws of Missouri 1931, p. 247 relates only to juries in cities containing over five hundred thousand inhabitants and exempts from jury duty any person "who holds any office of profit or employment created by or authorized under the laws of the United States, or of the State of Missouri, or the ordinances of such city."

CONCLUSION.

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This department is of the opinion that one, otherwise qualified as a juror, who is employed by the United States Government and working in the CCC camps of this State, is duly served with a summons to appear at his place of residence as a juror, is bound to appear for service unless he resides in a city of one hundred thousand or five hundred thousand inhabitants, in which case he is not bound to appear for jury service, as he is exempt from such service under the statutes.

This statutory exemption is not a disqualification but is a personal privilege which the juror may claim, or he may waive. To claim this privilege he has but to notify the Court, which issued the summons, that he is claiming his statutory exemption by reason of his employment by the United States Government.

Hon. Bert R. Mullen

-5-

May 23, 1936.

A qualified person who is duly summoned as a juror, and who is not exempt from service by legislative enactment must appear for service as provided in the summons, or for his failure to appear he may be held in contempt of Court.

Respectfully submitted

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General.

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