

MAGISTRATE COURTS: Magistrate jurors selected by Board of Jury Commissioners in counties wherein petit jurors are selected by such Board of Jury Commissioners.



October 21, 1947

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Honorable Walter E. Bailey
Judge of the Circuit Court
Jasper County
Joplin, Missouri

Dear Judge Bailey:

This is in reply to your letter of October 9, 1947, requesting an opinion from this department, which reads as follows:

"Owing to the uncertainty of the intent of the Legislature as expressed in Section 5 of Senate Bill No. 107, providing for the manner of selecting jurors for use in the Magistrate Courts of the State, I desire your opinion as to whether the County Court or the Jury Commission select these jurors in Jasper County Missouri.

"This Section reads, 'In all counties wherein by law Grand and Petit jurors are selected by a board of Jury Commissioners, such board of jury commissioners and the clerk thereof shall perform the duties hereby imposed on the county court and county clerk and shall proceed in the manner herein prescribed.'

"In this county the board of jury commissioners select the petit jurors but do not select the Grand Jurors as they are selected by either the Sheriff or the County Court, as directed by the Judge of the Circuit Court in which such grand jury are to be empaneled.

"We desire your opinion so that such jurors will be selected in the proper manner."

In counties of over 200,000 inhabitants and less than 700,000 inhabitants magistrate jurors are selected by the Board of Jury Commissioners in the same manner that circuit court jurors are selected. Section 3(c) of Senate Bill No. 107 of the 64th General Assembly provides:

"Provided, however, that in counties now containing or which may hereafter contain over 200,000 inhabitants and less than 700,000 inhabitants, the Board of Jury Commissioners shall select the jurors to serve in the Magistrate Courts from the regular Circuit Court jury wheel and under the same method and procedure as Circuit Court jurors are selected; and said jurors shall be summoned in the same manner as Circuit Court jurors are summoned."

There being no counties containing over 700,000 inhabitants, Senate Bill No. 107 is, in effect, a general provision relating to the method and procedure by which magistrate jurors are selected and summoned in counties having less than 200,000 inhabitants. The administration of said statute is enjoined on the county court and county clerk, except in certain counties as provided in Section 5 of Senate Bill No. 107, which reads as follows:

"In all counties wherein by law grand and petit jurors are selected by a board of jury commissioners, such board of jury commissioners and the clerk thereof shall perform the duties hereby imposed on the county court and county clerk and shall proceed in the manner herein prescribed."

It will be noted that in Jasper County, a county of 78,705 inhabitants according to the 1940 National Census, petit jurors are selected by a Board of Jury Commissioners. Sections 733 and 734 of the Revised Statutes of Missouri, 1939. Grand jurors in said county are selected by either the county court or the sheriff, as provided by Section 704, Mo. R.S.A.

From a literal reading of the provision in Section 5, that magistrate jurors shall be selected by a Board of Jury Commissioners in all counties wherein "grand and petit" jurors are selected by said Board of Jury Commissioners, it may be thought

that said provision applies only to those counties wherein both petit and grand jurors are selected in said manner. We do not believe that such was the intent of the Legislature in enacting Senate Bill No. 107. The method and procedure in selecting said jurors, as set out in said Senate Bill, necessarily applies to only counties of less than 200,000 inhabitants. In counties having more than 60,000 and less than 200,000 inhabitants, of which Jasper County is one, petit jurors are selected by a Board of Jury Commissioners, but no where in the statutes relating to the selection of grand jurors in those counties do we find a provision whereby grand jurors are selected by the Board of Jury Commissioners. On the contrary, they are selected by either the county court or the sheriff. Thus, the liberal words of Section 5 seem to set out an impossible requirement.

There are no counties of less than 200,000 inhabitants wherein both petit and grand jurors are selected by a Board of Jury Commissioners. In this classification only counties of more than 60,000 inhabitants and less than 200,000 inhabitants have a Board of Jury Commissioners, and in those counties petit jurors are the only jurors selected by such Board of Jury Commissioners.

A statute cannot be construed so as to make it require an impossibility or to lead to absurd results if it is susceptible to a reasonable interpretation. In *Donnelly Garment Co. v. International L. G. U. Union*, 99 Fed. 2nd 309, this rule is set out at page 317:

"It is a well established rule that all laws are to be given a sensible construction, and that a literal application of a statute which would lead to absurd consequences should be avoided whenever a reasonable application can be given to the statute consistent with the legislative purpose, *Hawaii v. Mankichi*, 190 U.S. 197, 212, 23 S. Ct. 787, 47 L. Ed. 1016; *United States v. Katz*, 271 U.S. 354, 357, 46 S. Ct. 513, 514, 70 L. Ed. 986; that general terms in statutes should be so limited in their application as to give a sensible construction, avoiding injustice, oppression or absurdity, *Church of the Holy Trinity v. United States*, 143 U.S. 457, 461, 12 S. Ct. 511, 36 L. Ed. 226; * * *"

See also *Lambur v. Yates*, 148 Fed. 2nd 137, 1.c. 139, and *State v. Ervine*, 72 S.W. (2d) 96, 1.c. 100.

Where the plain meaning of words used in a statute produces an unreasonable result, we may follow the purpose of the statute rather than the literal words. *United States v. Rosenblum Truck Lines*, 315 U.S. 50, 86 L. Ed. 671, and *State v. Smith*, 115 S.W. (2d) 816. It must be presumed that the Legislature intended to accomplish something by its enactment. The over-all plan of the Legislature was to enjoin on the Boards of Jury Commissioners and the clerks thereof the duty of selecting magistrate jurors in the larger counties. We believe that this plan was intended to apply to all counties in which there is a Board of Jury Commissioners, and that the county court should not be burdened by said duty in counties where there are such Boards of Jury Commissioners set up for the expressed purpose of selecting jurors. The literal words of Section 5 must necessarily yield to the manifest intent of the Legislature.

Conclusion.

Therefore, it is the opinion of this department that in counties which contain over 60,000 inhabitants and less than 200,000 inhabitants wherein by law petit jurors are selected by a Board of Jury Commissioners, such Board of Jury Commissioners and the clerk thereof shall perform the duties imposed on the county court and county clerk by Senate Bill No. 107 of the 64th General Assembly, with regard to the selection of jurors for magistrate courts.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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