

GRAND JURIES: Grand jury in Clay County selected by sheriff or board of jury commissioners in accordance with judge's direction.



November 17, 1955

Honorable Stephen R. Pratt
Prosecuting Attorney
Clay County
Liberty, Missouri

Dear Mr. Pratt:

We received your request for an opinion of this office, which reads as follows:

"Would you please give me an opinion as to the proper procedure for the selection of a Grand Jury for Clay County?"

"As you know, Clay County is a second class county, but we have a population of less than sixty thousand according to the last census."

As you mentioned in your opinion request, Clay County is a county of the second class having a population of less than sixty thousand inhabitants according to the last census. We find no statutory provision especially applicable to the selection of a grand jury for a county in such situation. Sections 495.040, et seq., RSMo 1949, were amended by House Bill No. 298 of the 68th General Assembly to provide a method for the selection of petit jurors in all second class counties. It formerly applied only to counties having a population between sixty thousand and two hundred thousand inhabitants. The amendment was necessary in order to make express provision for the selection of petit jurors in Clay County. However, no amendment was made of any statutory provision relative to the selection of grand juries to make any such statutes applicable to a second class county having a population of less than sixty thousand inhabitants.

In the absence of any statute especially applicable to Clay County, the general statutory provisions for the selection of grand jurors should be followed. Such procedure is set out in Section 540.020, RSMo 1949, which reads, in part, as follows:

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"1. No grand jury shall be convened except upon an order of a judge of a court having the power to try and determine felonies, but when so assembled such grand jury shall have the power to investigate and return indictments for all grades of crimes, and hereafter, whenever the judge of any court having power to try and determine felonies shall deem it necessary to cause a grand jury to be convened, he shall make an order, and if in vacation file the same with the clerk of said court and in term time he shall cause the same to be spread upon the records of said court, which order shall specify the time and place said grand jury shall be convened, and shall further specify whether said grand jury shall be drawn and selected by the board of jury commissioners or selected by the sheriff, and if said order shall require that said grand jury be drawn and selected by the board of jury commissioners, the clerk of said board of jury commissioners shall cause said board of jury commissioners to be convened and said board of jury commissioners shall thereupon draw and select said grand jury and the same shall be summoned in the same manner as provided by law for the selection and summoning of petit jurors. And if the said order shall require the sheriff of said county to select said grand jury, the clerk shall issue a special venire and deliver the same to the sheriff and he shall forthwith proceed to select the same, selecting them as nearly equal from each township in said county as possible."

Under the provisions of this section the circuit judge who orders the convening of the grand jury should specify whether the grand jury will be selected by the sheriff or by the board of jury commissioners. If the latter procedure is followed, it would be the procedure set out in Sections 495.040 to 495.190, RSMo 1949, as amended.

CONCLUSION

Therefore, it is the opinion of this office that the procedure for the selection of grand jurors in Clay County is to

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be determined by the circuit judge convening such grand jury, in accordance with Section 540.020, RSMo 1949. Under said section the grand jurors will be selected either by the sheriff or the board of jury commissioners in accordance with the judge's direction.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Robert R. Welborn.

Yours very truly,

JOHN M. DALTON
Attorney General

RRW:ml