

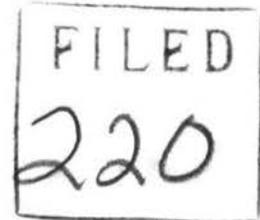
ST. LOUIS CITY CIRCUIT COURT:  
JURY COMMISSIONER:  
SHERIFF:  
JURY ASSEMBLY ROOM:  
DUTIES OF JURY COMMISSIONER  
AND SHERIFF REGARDING JURY  
ASSEMBLY ROOM:

The Circuit Court of the City of St. Louis may not lawfully transfer the jurisdiction, custody and operation of the jury assembly room in the Civil Courts Building in the City of St. Louis from the sheriff to the jury commissioner of said City.

Opinion No. 220-68

May 10, 1968

Honorable Richard J. Rabbitt  
Missouri House of Representatives  
68th District  
4340 Forest Park  
St. Louis, Missouri 63108



Dear Representative Rabbitt:

This is in answer to your request for an opinion which was stated as follows:

"Does the Circuit Court of the City of St. Louis en banc have the lawful power to make a rule which transfers the jurisdiction, custody and operation of the jury assembly room in the Civil Courts Building in the City of St. Louis from the sheriff of said City to the jury commissioner of said City?"

The provisions of the Missouri statutes which deal with juries are found in Title XXXIV and include Chapters 494 through 499. Chapter 498, RSMo. 1959 is specifically applicable to the City of St. Louis. There is no statute designating either the jury commissioner or the sheriff as being in charge of the assembly room, nor are there any sections within Chapter 498 which specifically provide for the jury assembly room which is in question; thus it is necessary for us to determine the intention of the legislature and the powers of the court and jurisdiction of the sheriff under applicable law.

In reviewing the history of our jury system, we must start back in 1855 when there was one statute for all counties. At that time the only pertinent provision was that the courts were to order the sheriff to summon a panel of jurors. In 1857 there was an act to provide a jury system for St. Louis County. L. 1856-57

Honorable Richard J. Rabbitt

p. 661. This act created the jury commissioner and provided that the sheriff should summons those people whose name was furnished by the jury commissioner. In 1879 at the time when St. Louis City was recognized as separate from St. Louis County, there was an act which provided for a jury system in cities having over 100,000 inhabitants (St. Louis). This system was much like that provided for St. Louis County in 1857. In 1931 there was an act which added jury supervisors to the system and except for minor changes, this act of 1931 (L. 1931 p. 243) is the same as our present Chapter 498 which applies to St. Louis City. The Board of Jury Supervisors consists of the Circuit Court en banc plus the circuit clerk (498.010 RSMo. Supp. 1967).

During this time when the jury system for St. Louis was developing, there were also systems developed for the courts in other categories of counties, which are now Chapters 495, 496 and 497. Starting again from the basic provision for all counties in 1855 there was a similar development in all three of these categories. In 1905 there was an act (L. 1905 p. 174) which provided that there was to be a general panel of jurors to be placed in the charge of the sheriff and the divisions of the court were to get their jurors from this panel. The act was applicable to Jackson County and is presently found in Section 497.160, RSMo. Cum. Supp. 1967. In 1911 (L. 1911 p. 305) there was a similar act which is now found in Sections 495.090 and 495.100. In 1933 (L. 1933 p. 277) there was another act having the same provisions which is now Section 496.060. Thus for juries in counties with population of 60,000 to 800,000, the legislature has made specific provisions for the assembly of jurors before assignment to the divisions, much like the St. Louis City Jury Assembly Room. To be emphasized is that in each instance when the legislature undertook to write a statute to provide for the assembly of prospective jurors, they specifically provided that this general panel of jurors was to be placed in charge of the sheriff.

With regard to St. Louis City, it has not been necessary for the legislature to specifically provide for the general panel of jurors to be assembled in charge of the sheriff, since the Circuit Court of St. Louis has operated in this manner by their own motion. If the legislature were to act now and make a similar provision for St. Louis City (Chapter 498) it could be considered an indication that what has been done prior to this was unauthorized.

It is a general rule that public officers have only such power and authority as are clearly conferred by law or necessarily implied from the powers granted. 67 C.J.S., Officers, Section 102, p. 366. And, a power not expressly granted by statute is implied only where it is so essential to the exercise of some power expressly conferred as plainly to appear to have been within the intention of the legislature. 82 C.J.S., Statutes,

Honorable Richard J. Rabbitt

Section 327, p. 634. Bearing these principles in mind, what are the duties imposed upon the jury commissioner by law?

A brief look at the history leading to the creation of jury commissioners is found in Eckrich vs. St. Louis Transit Co., (Mo. 1903) 75 S.W. 755, 759. In summary this illustrates that originally the sheriff was responsible for both the selection and the summons of the jury, but that in 1879 the duty of jury selection was placed upon the newly created jury commissioner. Since that time an elaborate system has been adopted for the selection of jurors as found in Sections 498.110 through 498.200. The purposes behind this history of legislation are set out in State vs. McGoldrick (Mo. 1951) 236 S.W.2d 306, 307 as follows:

"\* \* \* 'the object being as far as possible to procure a fair and impartial jury and to obviate the possibility of packing juries or selecting them with reference to particular cases, and also to equalize the burden of serving on juries among all persons qualified therefor.'"

The federal district court for the District of Columbia in a case concerning the federal courts' counterpart to the jury commissioner said:

"The very purpose of establishing a jury commission is to create an impartial body standing, so to speak, between the court and the public, to obtain on an individual basis suitable persons to serve on juries."  
United States vs. Ware, (1964) 237 F. Supp. 849, 851.

Thus the spirit of the legislation with regard to jury commissioners seems to be to insure a fair and impartial selection of jurors.

The jury assembly room, which is in question in this opinion, has no function until after the jury commissioner has made his selection from the jury wheel and the sheriff has issued a summons as provided in Section 498.160. This room is used as a gathering place for the jurors when they report for duty and the only selecting which goes on is the assignment of the jurors to the various divisions of the Circuit Court. Section 498.210, RSMo. 1959 purports to deal with the furnishing and assignment of jurors to certain courts, and states as follows:

"The jury commissioner of the City of St. Louis, Missouri, shall, in the manner pre-

Honorable Richard J. Rabbitt

scribed by the laws and by the rules of the Circuit Court of the City of St. Louis furnish the Court from the jury list, the names of such number of jurors as may be ordered by said court; \* \* \* "

This statute expressly states that the jury commissioner shall furnish names of jurors from the jury list and the only discretion given to the court is the manner in which these names are to be furnished. There is no provision in Chapter 498 which gives the jury commissioner any semblance of control over the jurors after they have been summoned. It does not appear essential to the jury commissioner's power of selection that he have control of the jury assembly room, since this room has no function until after the selection is finally made.

Regarding the Circuit Court's power in this matter, the court en banc under the statute is in effect the board of supervisors exercising directive control over the jury commissioner, with the addition of the circuit clerk (Section 498.010, supra.). Also, in 1866 there was an act (L. 1866 p. 73) made applicable to the St. Louis Circuit Court which provided:

"And in addition to the ordinary power of making rules conferred by the general law, the court may make all rules which its peculiar organization may, in its judgment, require, different from the ordinary course of practice, and necessary to facilitate the transaction of business therein. . . "

(underscoring added)

The underlined portion of the above quote apparently (from early case law) was referring to the fact that the court had several divisions. This same provision is now found in Section 478.397, RSMo. 1959. It would seem that this provision in absence of any qualifying statutes is sufficient to give the St. Louis Circuit Court the power to make the rules concerning the assembly of their jurors.

However, it is a fundamental principle that the courts have no power to make law, but only to declare the law as it is, construe it and enforce it. 16 Am. Jur. 2d, Constitutional Law, Section 225, p. 471. Thus, even if we assume that the Circuit Court has the general power to designate who is to have jurisdiction over the jury assembly room, we are still faced with the fact that legislation on this subject, its history and the duties imposed on the St. Louis Jury Commissioner by statute, all not only do not provide that the Commissioner be physically in charge of the jurors or their place of assembly, but also indicate strong intention that it is to be left in the hands of the sheriff as one

Honorable Richard J. Rabbitt

of his long-standing areas of responsibility.

Regarding the sheriff's traditional duties as to juries and jurors, in St. Louis as elsewhere, cases construing provisions of what is now Section 57.090, RSMo. 1959, general provisions as to sheriffs requiring attendance at court and furnishing them supplies, recognized sheriffs as responsible for keeping and boarding jurors when necessary even though no provision had yet been made for payment of such costs (Person v. Ozark County (1884) 82 Mo. 491, State v. Smith (1878) 5 MA 427). In like manner, Section 550.020, RSMo. 1959, places sheriffs "in charge" of the jury in felony cases, including the supplying of "board and lodging". In all cases, the sheriff of course is the official who summons a jury, including alternate or additional jurors if the panel is exhausted, and takes an oath to so perform these duties (Sections 494.060 and 494.070, RSMo. 1959); and "a trial court has authority to [so] order the sheriff" (emphasis added; see State v. Hamilton (Mo. Sup. 1937) 102 S.W.2d 642, 648).

In summary, no statute specifically provides for a designated person to be in charge of the jury assembly room in the City of St. Louis; and while the Circuit Court there has general rule-making power by statute, common law precedent generally places the sheriff in charge of jurors and their needs. Furthermore, the study of jury commissioner legislation set out herein indicates that the legislature did not intend to place the jury commissioner physically in charge of the jurors or their place of meeting but that these functions should remain with the sheriff, who now performs them.

#### CONCLUSION

Therefore, it is the opinion of this office that the Circuit Court of the City of St. Louis may not lawfully transfer the jurisdiction, custody and operation of the jury assembly room in the Civil Courts Building in the City of St. Louis from the sheriff to the Jury Commissioner of said City.

The foregoing opinion, which I hereby approve, was prepared by my assistant, William L. Culver.

Yours very truly,



NORMAN H. ANDERSON  
Attorney General