

CITIES, TOWNS AND VILLAGES: (1) A jury in a municipal court in
POLICE COURTS: a fourth class city in a second class
MUNICIPAL COURTS: county should be selected as pro-
vided in Chapter 499, RSMo, when no
written request has been made by a magistrate as provided for under
Section 495.040, RSMo Supp. 1967. (2) The number of jurors for
a jury in a municipal court in a fourth class city is to be deter-
mined as provided for under Section 543.210, RSMo.

OPINION NO. 333

November 18, 1969



Honorable P. Wayne Kuhlman
Assistant Prosecuting Attorney
Clay County Courthouse
Liberty, Missouri 64068

Dear Mr. Kuhlman:

This is in response to your request for an opinion from
this office in part as follows:

"I would appreciate receiving an opinion
from your office setting forth the proper
procedure for the selection of a jury
panel for the police court of the City of
Pleasant Valley, Missouri."

We understand from the correspondence which you enclosed
with your opinion request and from information furnished us by
Clifford G. Hall, Circuit Clerk, Clay County, that Clay County
has two magistrate courts -- Division No. 1 which has juris-
diction over the eastern part of Clay County, and Division No. 2
which has jurisdiction over the western part of said county.
We also understand that no written request has been made in the
past by either magistrate with the Jury Commission Board of Clay
County for it to select the jurors in magistrate court cases.

Pleasant Valley is a fourth class city located in Clay County
which is a second class county.

Section 98.550, RSMo, provides that when any person shall be
arrested in a fourth class city for the violation of a city ordi-
nance it shall be the duty of the mayor or police judge to hear
and determine forthwith the complaint alleged against the defen-
dant, unless for good cause the trial be postponed, and that

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"defendants shall be entitled to trials by jury, as in prosecution before magistrates."

Chapter 495, RSMo, provides for the selection of juries in second class counties. Section 495.040, Missouri Supplement, provides that petit juries for the circuit court "and for any magistrate court having jurisdiction in such county where the magistrate files written requests with the Jury Commission Board shall be selected as provided in Sections 495.040 to 495.190.

Chapter 499, RSMo, provides for the selection of jurors for magistrate courts. Section 499.010, RSMo, provides:

"At least once each year on or before the first day of May, the board of jury commissioners shall select names of not less than four hundred persons having all of the qualifications of jurors; and in selecting such names the board shall select such number of persons from each township as the population of such townships bear to the population of the entire county. No person shall be selected who has served on any grand, petit or magistrate jury within one year from the time of making the selection. The names and addresses of the persons selected from each township shall be written on separate slips of paper of the same kind and size and placed in a box with a sliding lid and thoroughly mixed."

It is the opinion of this office that under Section 495.040, Missouri Supplement, unless the magistrate files a written request with the Jury Commission Board for juries in his court to be selected by the Jury Commission Board in a second class county, Chapter 495, RSMo, does not apply and all juries before such magistrate court shall be selected as provided for under Chapter 499.

Supreme Court Rule 37 governs the practice and procedure of all cases in all municipal courts. Supreme Court Rule 37.53 provides in part:

"(b) Where the trial by jury is authorized by law and the defendant or his attorney requests, a jury shall be selected in the manner provided for the selection of juries in misdemeanor cases tried in magistrate courts, except as otherwise provided by law. The jury so selected shall determine the facts and render a verdict."

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Although violations of a city ordinance are not crimes but are civil proceedings, it is our opinion that under Section 98.550, RSMo, and Supreme Court Rule 37.53, Subdivision (b), supra, a jury in a municipal court is to be selected as provided for the selection of juries in misdemeanor cases in a magistrate court.

Chapter 543, RSMo, governs the proceedings before magistrate courts in misdemeanor cases. Section 543.210, RSMo, provides that all jury trials before a magistrate shall be by a jury of twelve persons unless a less number shall be agreed upon, but not less than six.

It is the opinion of this office that Section 543.210, RSMo, determines the number of jurors to be selected for the trial of a defendant charged with the violation of a city ordinance in a fourth class city.

CONCLUSION

It is the opinion of this office that:

(1) A jury in a municipal court in a fourth class city in a second class county should be selected as provided in Chapter 499, RSMo, when no written request has been made by a magistrate as provided for under Section 495.040, RSMo Supp. 1967.

(2) The number of jurors for a jury in a municipal court in a fourth class city is to be determined as provided for under Section 543.210, RSMo.

The foregoing opinion, which I hereby approve, was prepared by my assistant Moody Mansur.

Yours very truly,



JOHN C. DANFORTH
Attorney General