

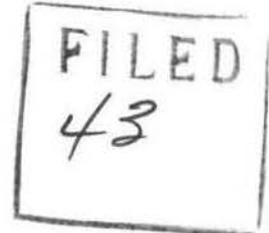
JURORS:
GRAND JURY:
CONSTITUTIONAL LAW:

Paragraph 2 of Section 494.020, RSMo Supp. 1971, renders any person who has served as a member of a grand jury panel prior to the effective date of the statute and within ten years next preceding his selection ineligible for service as a grand juror and such statute is constitutional.

OPINION NO. 43

February 2, 1972

Honorable Gene McNary
Prosecuting Attorney
St. Louis County Courthouse
Clayton, Missouri 63105



Dear Mr. McNary:

This is in response to your request for an opinion whether paragraph 2 of Section 494.020, RSMo Supp. 1971 precludes only a person who has served as grand juror after the effective date of this statute or precludes any person who has served on a grand jury within ten years preceding his selection including the period prior to the enactment of this statute from serving as a grand juror, and if so, whether the statute is constitutional.

Section 494.020, paragraph 2, RSMo Supp. 1971, provides:

"2. Any person who has served as a member of a grand jury panel within ten years next preceding his selection shall not be eligible for service as a grand juror."

Article I, Section 13 of the Constitution of Missouri provides:

"That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be enacted."

The question arises as to whether this statute applies to a person who served on the grand jury prior to its enactment.

The statute provides that any person who has served as a member of the grand jury panel within ten years next preceding his selection cannot be eligible for service as a juror.

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From the language used it is clear that the legislature intended the statute to apply to persons who have served on a grand jury panel within ten years next preceding his selection including the period prior to the enactment of the statute. It is our view the language used in this statute of the past tense indicates that was the intent of the legislature when it enacted the statute. The qualifications of a grand juror are determined at the time of his selection as a juror, and to hold that it applies only to persons who have served on the grand jury after the effective date of the statute would mean that it would be ten years before the statute would be fully effective which we believe is contrary to the intent of the legislature. *State ex rel. LeNeve v. Moore*, 408 S.W.2d 47 (Mo. banc 1966), and *Barbieri v. Morris*, 315 S.W.2d 711, 714 (Mo. 1958).

This leaves only the question as to whether it results in the statute's being retrospective in its operation in violation of Article I, Section 13 of the Constitution. In *Barbieri v. Morris*, supra, the director of revenue had suspended the license of a person to operate an automobile on the ground that he has been found to be a habitual violator of traffic laws under statute defining such habitual violators as a person who has been adjudged guilty of four moving traffic violations within two years. The issue was whether convictions prior to the effective date of the statute could be included, or whether only violations subsequent to the date of the statute could be considered under a statute which defined a habitual violator of traffic laws as any person who "has been adjudged guilty of at least four times in two years violating certain traffic laws or ordinances." In discussing the effect of this statute, the court stated, l.c. 714:

"'Retroactive' or 'retrospective' laws are generally defined, from a legal viewpoint, as those which take away or impair vested rights acquired under existing laws, or create a new obligation, impose a new duty, or attach a new disability in respect to transactions or considerations already past.' *Lucas v. Murphy*, 348 Mo. 1078, 156 S.W.2d 686, 690. But it has been held specifically that a 'statute is not retrospective because it merely relates to prior facts or transactions but does not change their legal effect, or because some of the requisites for its action are drawn from a time antecedent to its passage, or because it fixes the status of a person for the purpose of its operation.' *State ex rel. Sweezer v. Green*, 360 Mo. 1249, 232 S.W.2d 897, 900, 24 A.L.R.2d 340. It is said to be retroactive

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'only when it is applied to rights acquired prior to its enactment.' 82 C.J.S. Statutes § 412. See also State ex rel. Ross, to Use of Drainage Dist. No. 8 of Pemiscot County v. General American Life Ins. Co., 336 Mo. 829, 85 S.W.2d 68, 74; Dye v. School District No. 32 of Pulaski County, 355 Mo. 231, 195 S.W.2d 874, 879; 16A C.J.S. Constitutional Law § 414. Paul admits in his brief that the right to drive an automobile is not a vested right, and as stated in State ex rel. Sweezer v. Green, supra, 'We have many times held that a statute is not retrospective in its operation within the constitutional prohibition, unless it impairs a vested right.'"

The question arises whether a person has a vested right to serve as a juror.

It is stated in 16 C.J.S., Constitutional Law, paragraph 221, no person has the vested right to serve as a juror. In *Garrett v. Weinberg*, 54 S.C. 127 (1898), it was contended inasmuch as a juror was convicted of larceny in 1871, prior to the adoption of the Constitution, at a time when, it is claimed, such conviction did not disqualify him from serving as a juror, he could not be disqualified by any subsequent legislation, either constitutional or statutory, as such legislation would be ex post facto, and, therefore, void under the provisions of the Constitution of the United States. In holding that qualifications of a juror may at any time be changed by the sovereign powers of the state without any violation of the ex post facto provision of the Constitution of the United States and without divesting any vested rights of a citizen, the court stated, l.c. 143:

". . . As is said in *Cooley on Const. Lim.* (2d edit.), at page 598, in speaking of the so-called right to participate in elections: 'Each State establishes its own regulations on this subject--subject only to the fifteenth amendment to the National Constitution, which forbids that the right of citizens to vote shall be denied or abridged on account of race, color or previous condition of servitude. Participation in the elective franchise is a privilege rather than a right (italics ours), and it is granted or denied on grounds of general policy.' Hence a State may make any change in the law prescribing the qualifications of electors deemed necessary to effectuate its views

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of public policy, subject only to the provisions of the fifteenth amendment above referred to, and any legislation to that end possesses none of the features of an ex post facto law (see comments of Judge Cooley upon this subject in his work on Const. Lim., at p. 263, et seq.), and cannot be regarded as divesting any vested right of the citizen. If this be so as to the important matter of the qualifications of an elector, how much more is it true as to the qualifications of a juror. Indeed, service on a jury is not a matter of right, but a matter of public duty, the performance of which is enforceable by proper penalties. It cannot be regarded as a privilege, but on the contrary is usually regarded as a burden. Hence we see no reason why the State may not, from time to time, make such alterations in the law prescribing the qualifications of a juror by legislation, either constitutional or statutory, as the case may require, as may be regarded most conducive to the public welfare. A citizen cannot claim any vested right in any statutory privilege or exemption, unless it rests upon some consideration importing into it an element of contract. As is said in Cooley on Const. Lim., 383, 'The citizen has no vested right in statutory privileges or exemptions. Among these may be mentioned exemptions from the performance of public duty upon juries, or in the militia and the like. * * * All these rest upon reasons of public policy, and the laws are changed as the varying circumstances seem to require.' From these views it necessarily follows that when the question arises as to the qualifications of a given person to sit as a juror, such question must be determined by the law as it stands when such person is presented as a juror. . . ."

State ex rel. Flickinger v. Fisher, 119 Mo. 344 (1893), the question was whether a dentist was exempt from jury duty under a statute which exempted "practitioners of medicine." In discussing the subject of the qualifications of jurors, the court stated that the qualifications of jurors and exemption of certain citizens from jury service has always in this state been purely a subject of statutory regulation. The court stated, l.c. 355:

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"Service upon a jury of the country is a privilege as well as a duty, and, however regarded by the individual in any particular case is, in fact and in law, a position of honor and trust charged with the gravest responsibility, from the discharge of the duties of which no citizen ought to be exempted who is personally fit for the position, except for the general welfare. Exemption from jury service is not granted as a personal favor, but for the public comfort and convenience, and in the light of this reason for its existence, should the law governing such service be interpreted and administered."

It is our view that a person has no vested right to serve on a grand jury and that the above statutory provision is not in conflict with Article I, Section 13 of the Constitution because it does not violate any vested right of an individual.

CONCLUSION

It is the opinion of this office that paragraph 2 of Section 494.020, RSMo Supp. 1971, renders any person who has served as a member of a grand jury panel prior to the effective date of the statute and within ten years next preceding his selection ineligible for service as a grand juror and such statute is constitutional.

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

Yours very truly,



JOHN C. DANFORTH
Attorney General