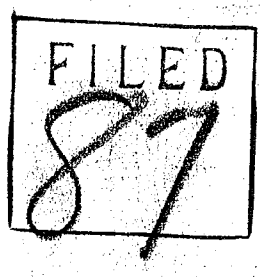
CIRCUIT COURTS: Section 540.020 RSMo 1949, providing that grand
GRAND JURIES: jury be convened upon order of judge of court
WHEN CONVENED: of record having jurisdiction of felonies is directory rather than mandatory. Does not require grand jury convened at least once during certain period of time. Calling of grand jury discretionary with judge, who may order same convened at such times as he deems necessary.



March 4, 1954

Honorable George T. Sweitzer, Jr.
Prosecuting Attorney
Cass County
Harrisonville, Missouri

Dear Sir:

This department is in receipt of your recent request for an opinion which reads in part as follows:

> "Is it or is it not by law mandatory or even obligatory that the Judge of a Circuit Court in any County of this State call a Grand Jury in such County at least once during any specified length of time."

There are a number of Missouri statutes specifically providing the procedure that shall be followed in convening a grand jury in counties or cities of a certain population. The question propounded in the opinion request is not concerned with such procedure as it pertains to counties or cities of a certain population, but it is concerned with the proposition as to whether it is the mandatory duty or even obligatory upon the Circuit Judge to call a grand jury in "any county of this State" at least once during a specified period of time.

As we construe the inquiry, and particularly the words "any county of this State", such inquiry has reference to the procedure for convening a grand jury in every county of the state. If we were to attempt to answer the inquiry in its present form, this would necessitate the writing of an opinion in regard to the procedure for convening a grand jury as it applies to the 114 counties of Missouri and the City of St. Louis.

Neither time nor space will permit us to write such a general opinion, and it is believed that you did not intend to request one

of this kind, since the duties of your office as prosecuting attorney would relate only to your dealings with grand juries in Cass County, and you would have no legal right or authority or duties to perform with reference to grand juries in any other counties of the state. Therefore the scope of our discussion of the matter of inquiry will be limited to such matter only as it concerns Cass or other counties of the same or similar population.

From the last federal census report, your county of Cass had a population of 19,325. Upon our examination of the Missouri Revised Statutes of 1949, it appears that there are no sections of said statutes specifically relating to the procedure for calling grand juries applicable to counties or cities having a population as small as Cass County. Consequently, the procedure to be followed in the smaller counties is that provided generally by Section 540.020 RSMo 1949. Said section reads as follows:

> "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."
>
> "2. A grand jury shall be convened at the discretion of a judge of the court having the power to try and determine felonies, to examine public buildings, and report on their conditions; to inquire into violations of the game and fish law, the election laws, the various liquor laws, and such other violations as the court may direct. The grand jury shall make careful inquiry into the failure or refusal of county and municipal officers to do their duty, as provided by law, and the court shall charge each grand jury to make inquiry into any violations by county officers of laws relating to the finances or financial administration of the county."

(Underscoring ours)

From the provisions of this section, it is obvious that a grand jury can be convened only when ordered by a judge of a court of record of the county having power to determine felony cases. In Cass or other similar counties, this reference would necessarily be to the Circuit Judge, as he is the only Judge of a court having jurisdiction of felony cases and would be the only one who could order a grand jury convened.

This section provides, "that whenever the judge having power to determine felonies shall determine it necessary to cause a grand jury to be convened, he shall make an order * * * which shall specify the time and place said grand jury shall be convened * * *. A grand jury shall be convened at the discretion of a judge having power to try and determine felonies * * *".

Neither this nor any other section of the statutes requires the circuit judge in such small counties to call a grand jury at least once during a specified period of time. As we read Section 540.020, supra, it appears to be the legislative intent from the

language expressed in said section that the convening of a grand jury is left to the sound discretion of the circuit judge who has the power to order a grand jury convened if and when he deems it necessary.

CONCLUSION

It is the opinion of this department that the provisions of Section 540.020 RSMo 1949, which provide that a grand jury shall be convened upon the order of a judge of a court of record of a county, having jurisdiction of felonies, are discretionary rather than mandatory, and do not require said judge to order a grand jury convened at least once during any certain period of time. Such matter being left to the discretion of said judge, he may order a grand jury convened at such times as he deems necessary.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul N. Chitwood.

Very truly yours,

JOHN M. DALTON
Attorney General

PNC:sm