

JURORS:  
MAGISTRATE COURT:

Sheriff should summon jurors to serve in magistrate court from body of county, such jurors to have same qualifications as jurors chosen for regular petit jury, and to be paid as provided in Sec. 13419, R. S. Mo. 1939, from costs collected in cause in which jurors serve.

January 11, 1947



Honorable A. J. Bolinger  
Judge of the Magistrate Court  
Versailles, Missouri

Dear Sir:

This office is in receipt of your request for our opinion in which you ask concerning the qualifications, manner of selection and amount of pay of jurors in the new magistrate court.

Senate Bill No. 207, enacted by the 63rd General Assembly, and effective by its own provision on the 1st day of January, 1947, so far as this discussion is concerned (Section 146), contains the following provisions relating to the selection and qualifications of jurors in the magistrate court:

"Section 98. Before the magistrate shall commence an investigation of the merits of the cause, by an examination of the witnesses, or the hearing of any other testimony, either party may demand that the cause be tried by a jury, which jury shall be composed of twelve good and lawful persons having the qualifications of jurors in the circuit court, unless the parties shall agree on a less number, in which case the jury shall consist of the number agreed upon, not less than six; Provided, that three-fourths or more of the jurors concurring may return a verdict, which shall have the same force and effect as if rendered by the entire panel. If the verdict be rendered by the entire panel, the foreman alone may sign it, but if rendered by a less number

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than the entire panel, it shall be signed by all the jurors who agree to it.

"Section 99. The magistrate shall issue a summons directed to the sheriff or other officer provided by law, commanding him to summon eighteen, or six more than the parties may have agreed upon, good and lawful persons of the county, qualified to serve as jurors in the circuit court of the said county, who shall be nowise of kin to either party, nor interested in the suit, to appear before such magistrate at a time and place named therein to make a jury for the trial of the action between the parties named in the summons.

"Section 100. The sheriff or other officer provided by law shall execute such jury summons fairly and impartially, and shall not summon any person who he has reason to believe is biased or prejudiced for or against either of the parties. Jurors shall be personally served, and the sheriff or other officer provided by law shall make a list of the persons summoned, which he shall certify and annex to the summons, and return to the magistrate. If a sufficient number of competent jurors cannot be obtained from the panel returned, the sheriff or other officer provided by law shall immediately summon others to serve in their places."

The qualifications of jurors in the circuit court, referred to in both Section 98 and Section 99, supra, are to be found in Section 697, R. S. Mo. 1939, which is as follows:

"Every juror, grand and petit, shall be a male citizen of the state, resident of the county, sober and intelligent, of good reputation, over twenty-one years of age and otherwise qualified."

While you suggest that the word "qualifications" in referring to and modifying the word "jurors" may refer to the manner of selection of a juror as well, and that jurors in the magistrate court must be drawn in the manner provided in Section 706, R. S. Mo. 1939, we cannot concur, as we believe the qualifications referred to are those set out in Section 697,

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supra, and mean certain essentials possessed by the individual selected, at the time he is to act as a juror, regardless of the manner in which he came to be chosen.

In passing, it should be mentioned that no longer must a juror be a male citizen, because of provisions of the 1945 Constitution of Missouri and legislation thereunder.

We invite attention to the first sentence of Section 99, supra, where we find, "\* \* \* summons directed to the sheriff \* \* \* commanding him to summon eighteen \* \* \*" (underscoring ours), and, continuing, "good and lawful persons of the county." To us, it seems that a selection of a jury from the body of the county is contemplated.

These views are given further support by language in Section 100, supra, where we find, "The sheriff or other officer \* \* \* shall execute such jury summons fairly and impartially, and shall not summon any person \* \* \*." This is susceptible of no other meaning than that the sheriff is to use his discretion in "picking up" men who have the same qualifications as would be required of them if they were serving in the circuit court. A contrary interpretation would mean that the jury in the magistrate court, selected from the regular panel chosen for the circuit court, would rehear the case on appeal from the magistrate court, or at least have the opportunity to do so.

We find no provision in any bill or statute relating directly to the pay of jurors in the magistrate court. However, magistrate courts are now courts of record, as provided by Section 19 of Senate Bill No. 207:

"Magistrate courts shall be courts of record. \* \* \* "

This being true, we believe the compensation of jurors is governed by Section 13419, R. S. Mo. 1939, which is, in part, as follows:

"Jurors shall be allowed fees for their services as follows:

\* \* \* \* \*

"For each person summoned, attending and reporting to any court of record, per day, except as otherwise provided by law..... 1.00

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"For each mile traveled in going to and returning from the place of trial, in attending any trial before a court of record, per mile..... .05

"All fees allowed jurors as above shall be taxed as costs in the cases, respectively, in which they were summoned; but juries serving in more than one case on the same day, at the same place, shall only be allowed fees in one case; and any juror, who shall claim fees for attending in two or more cases, on the same day, at the same place, shall not be allowed fees for that day."

Without quoting at length Section 13398, R. S. Mo. 1939, that section provides for the collection of the jurors' fees mentioned, and in the absence of a provision authorizing the payment of jurors from the county funds or other sources, we must hold that payment of the jurors in any case is dependent upon the collection of the proper fees from the party to the litigation against whom the costs are properly chargeable.

We are cognizant of Sections 723, 724 and 725, all in R. S. Mo. 1939, and which apparently relate to jurors in courts in general, but consider them inapplicable because of Section 696, R. S. Mo. 1939, and the title of the article. Section 696 states that "except as otherwise provided by law," jurors shall be paid and summoned as set out in the article, while the article is styled "Grand and Petit Juries."

#### CONCLUSION

Summarizing our conclusions, it is the opinion of this office that the sheriff or other designated officer should summon jurors to serve in the magistrate court from the body of the county, such jurors to have the same qualifications as jurors chosen from the regular petit jury in the county, and that such jurors should be paid as provided in Section 13419, R. S. Mo. 1939, from costs collected in the cause in which the jurors serve, as provided in the latter section.

Respectfully submitted,

APPROVED:

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