



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Milton Greer Mell  
District Attorney  
7th Judicial District  
Tyler, Texas

Dear Sir:

Opinion No. 0-3187

Re: Grand Jurors should be selected  
by Jury Commission in Smith  
County - Petit Jurors of Smith  
County should be selected under  
jury wheel system.

Your request for opinion has been received and carefully considered by this department. We quote from your request as follows:

"Will you please give us your opinion upon the following question:

"Article 2096 of the Revised Civil Statutes of Texas requires Counties of a certain size to use a jury wheel in selecting jurors in the County and District Courts. You will observe that this Article merely uses the word 'jurors' and does not specify or specifically state that the Grand Jury shall be drawn from the jury wheel.

"There is also a statute, Article 333 of the Code of Criminal Procedure, providing for the manner of selection of grand jurors. The question is: Should grand jurors as well as petit jurors be selected from the jury wheel in Counties where the jury wheel is in use, or should the Court select the petit jury from the jury wheel and order a Jury Commission to pick the Grand Jury?"

Article 2094, Vernon's Annotated Texas Civil Statutes, is applicable to Smith County, Texas, and reads as follows:

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"Between the first and fifteenth days of August of each year, in each county having a population of at least fifty-eight thousand or having therein a city containing a population of at least twenty thousand, as shown by the preceding Federal Census, the Tax Collector or one of his deputies, together with the Tax Assessor or one of his deputies, together with the Sheriff or one of his deputies, and the County Clerk or one of his deputies, and the District Clerk or one of his deputies, shall meet at the court house of their county and select from the list of qualified jurors of such county as shown by the tax lists in the Tax Assessor's office for the current year, the jurors for service in the District and County Courts of such county for the ensuing year in the manner hereinafter provided."

Article 2095, V. A. T. C. S., directs the method of placing cards of the names and addresses of prospective jurors in the jury wheel, etc.

Article 2096, V. A. T. C. S., reads as follows:

"Not less than ten days prior to the first day of a term of court, the district clerk or one of his deputies, and the sheriff, or one of his deputies, in the presence and under the direction of the district judge, if the jurors are to be drawn for the district court, or the clerk of the county court, or one of his deputies, and the sheriff, or one of his deputies, in the presence and under the direction of the county judge, if the jurors are to be drawn for the county court, shall draw from the wheel containing the names of jurors, after the same has been well turned so that the cards therein are thoroughly mixed, one by one the names of thirty-six jurors, or a greater or less number where such judge has so directed, for each week of the term of the district or county courts for which a jury may be required, and shall record such names as they are drawn upon as many separate

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sheets of paper as there are weeks for such term or terms for which jurors will be required. At such drawing; no person other than those above named shall be permitted to be present. The officers attending such drawing shall not divulge the name of any person that may be drawn as a juror to any person."

We call your particular attention to Article 2097, Vernon's Annotated Texas Civil Statutes, which clearly denotes that the jury wheel system is applicable to the selection of petit jurors, not grand jurors. Said article reads as follows:

"The several lists of names so drawn, shall be certified under the hand of the clerk or the deputy doing the drawing, and the district or county judge in whose presence said names were drawn from the wheel, to be the list drawn by said clerk for the said several weeks, and shall be sealed up in separate envelopes indorsed, 'List of petit jurors for the \_\_\_ week of the \_\_\_ term of the \_\_\_ court of \_\_\_ county,' (filling in the blanks properly) and the clerk doing the drawing shall write his name across the seals of the envelopes and shall then immediately deliver the same to the judge in whose presence such names were drawn, or to his successor in office in case such judge dies before such delivery can be made to him." (Underscoring ours)

We quote from 26 Texas Jurisprudence, Jury, Section 3, Definitions and Terminology, pages 566 and 567, as follows:

"Where the word 'jury' is used alone it usually signifies a petit jury, and it is so used throughout this article. Generally speaking, 'jury' means the twelve or six men organized for the trial of a particular case, but the term is also used more broadly in the sense of 'panel'. . . .

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"Panel" is another word that is used in various senses. According to its context, it may mean the jurors for the term or for the week, or the names drawn from the box and listed. The word has also been used to designate the men impaneled to try the cause and even an individual juror. Similarly, the terms 'impanelment' and 'impaneled' are used to denote completion of the organization of a panel for the week and a jury for the cause.

"Juror" is also a word of comprehensive meaning, signifying either one eligible to serve, or one selected to serve, or one on the panel, or one actually serving. Since it tends to clarify that the word used should indicate whether prospective or actual service is meant, 'juror' might be used in this article in the prospective sense and 'juryman' employed to denote one who actually sits in the case."

Chapter 1, Title 7, Vernon's Annotated Texas Code of Criminal Procedure, provides a specific and detailed method for the organization of the Grand Jury. Article 333, V. A. T. C. C. P., provides for the appointment of three jury commissioners, by the District Judge at each term of the District Court, and prescribes certain qualifications which each jury commissioner must possess. Article 334, V. A. T. C. C. P., provides for the notification of such commissioners of such appointment. Article 335, V. A. T. C. C. P., prescribes the form of oath to be taken by such commissioners. Article 336, V. A. T. C. C. P., provides for the instruction by the Judge of said commissioners as to their duties, etc. Article 337, V. A. T. C. C. P., provides that the jury commissioners shall be kept free from intrusion during their session, etc. Article 338, V. A. T. C. C. P., provides that the jury commissioners shall select sixteen men from the citizens of the different portions of the county to be summoned as grand jurors for the next term of the court. We also call your attention to Articles 340, 341, 342, 344, 345, 348, 349, 352, 353, 354, 355 and 357, Vernon's Annotated Texas Code of Criminal Procedure, which deal with the organization of the grand jury.

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You are respectfully advised that it is the opinion of this department:

1. That Articles 2094, 2095, 2096, et seq., Vernon's Annotated Texas Civil Statutes, known as the "Jury Wheel Law" deal with the selection of petit jurors in county and district courts and not with the selection of grand jurors.

2. That petit jurors of Smith County, Texas, in county and district courts should be selected under the "Jury Wheel Law".

3. That grand jurors of Smith County, Texas, should be selected in the manner outlined by the pertinent statutes set out in Chapter 1, Title 7, Vernon's Annotated Texas Code of Criminal Procedure.

Trusting that this satisfactorily answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

*Wm. J. Fanning*

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Assistant

WSF:GO

APPROVED FEB 27, 1941

*Gerard B. Mann*

ATTORNEY GENERAL OF TEXAS

