

The State of South Carolina



Office of the Attorney General

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August 20, 1986

Vivian B. Wardlaw, Clerk of Court
Liberty Police Department
206 Front Street
Liberty, South Carolina 29657

Dear Ms. Wardlaw:

In a letter to this Office you questioned the procedure to be followed in selecting juries for a case tried in the Municipal Court. You indicated that you are referencing a single trial as opposed to a trial conducted during a term of court. You also stated that an attorney has been insisting on having forty potential jurors present in the courtroom at the time of the selection of the six jurors and four alternates selected for a particular case.

In selecting jurors for a single trial in municipal court, Sections 14-25-165 (a), (c), and (d) of the Code control. Such provisions state:

(a) The drawing and composing of juries for single trials or terms of court shall be conducted, mutatis mutandi, according to the statutes relating to the drawing and composing of juries in magistrates' courts, except as otherwise specifically provided by this chapter. A person appointed by the municipal judge who is not connected with the trial of the case for either party shall draw out of Compartment "A" of the jury box thirty names and the list of names so drawn shall be delivered to each party or to the attorney for each party.

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(c) The names drawn pursuant to either subsection (a) or (b) shall be placed in a box or hat and individual names randomly drawn out one at a time until six jurors and four alternates are selected. Each party shall have a maximum of six peremptory challenges as to primary jurors and four peremptory challenges as to alternate jurors and such other challenges for cause as the court may permit. If for any reason it is impossible to select sufficient jurors and alternates from the names drawn, names shall be randomly drawn from Compartment "A" until sufficient jurors and alternates are selected.

(d) Where a jury is drawn and composed for a single trial, as provided in subsection (a) above, the parties shall exercise peremptory challenges in advance of the trial date, and only persons selected to serve and alternates shall be summoned for the trial.

In a prior opinion of this Office dated March 17, 1980, a copy of which is enclosed it was stated:

(t)here are no statutory or constitutional provisions mandating the appearance of all prospective jurors for a jury trial in magistrate's court in order that they may be examined on their voir dire prior to a defendant exercising any peremptory challenges or challenges for cause. However a defendant does have the right to examine on their voir dire those jurors selected to hear the case to ascertain a basis for a challenge for cause.

While such opinion dealt with a magistrate's court jury, the statutes interpreted in the opinion are very similar to the statutes referenced above dealing with the municipal court. Therefore, it appears that the conclusions of the prior opinion would similarly be applicable to municipal courts.

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In conclusion, I am unaware of any provisions which mandate that all prospective jurors for a single jury trial in municipal court appear in order for an attorney to exercise the challenges permitted. As stated in Section 14-25-165(d) the parties shall exercise any peremptory challenges before the trial date and only persons who are selected to serve and alternates are to be summoned for the trial. If there is anything further, please advise.

Sincerely,




Charles H. Richardson
Assistant Attorney General

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Enclosure

REVIEWED AND APPROVED BY:


Robert D. Cook
Executive Assistant for Opinions