

1982 WL 189303 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 25, 1982

***1 RE: Opinion Request**

Motte L. Talley
Staff Attorney
South Carolina Court Administration
South Carolina Supreme Court
Post Office Box 11788
Columbia, South Carolina 29211

Dear Mr. Talley:

In a letter to this office you asked the following question:

‘When jurors are summoned pursuant to § 22-2-90, what is the minimum number of jurors which must be physically present to begin a term of magistrate's court?’

[Section 22-2-90 of the 1976 Code](#) of Laws, as amended, provides for the selection of a jury list for magisterial courts which schedule terms for jury trials. Such section states in part:

‘Not less than ten nor more than twenty days prior to a scheduled term of jury trials, a person selected by the presiding magistrate shall draw forty jurors to serve one week only. Immediately after such jurors are drawn the magistrate shall issue his writ of venire facias for such jurors requiring their attendance on the first day of the week for which they have been drawn and such writ shall be forthwith delivered to the magistrate's constable or the sheriff of the county concerned.’

[Section 22-2-100 of the 1976 Code](#) of Laws, as amended, further provides that:

‘The names drawn pursuant to either [§ 22-2-80](#) or [§ 22-2-90](#) 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.’

This office in an earlier opinion dated March 17, 1980, a copy of which is enclosed, was concerned with the question of whether all prospective jurors for a single jury trial in magistrate's court, as opposed to a term of court, must appear in order that a defendant might examine them on their voir dire prior to exercising peremptory challenges or challenges for cause. Referencing [§ 22-2-110 of the 1976 Code](#) of Laws, as amended, which provides that ‘parties shall exercise peremptory challenges in advance of the trial date, and only persons selected to serve and alternates shall be summoned for trial’, this office advised that:

‘There are no statutory provisions expressly mandating that the entire jury venire be present when the six jurors and two alternates are selected for a particular trial . . . (Referencing § 22-2-120) . . . it is apparent that examination of the jurors selected to hear a case on their voir dire is contemplated if timely motion is made. Therefore, when timely request for examination is made, it is the opinion of this office that a to examine on voir dire those jurors ultimately selected . . . to hear a case.’

*2 While [§ 22-2-90](#), *supra*, require that forty jurors be drawn and that such jurors be summoned to attend the first day of the term of magistrate's court, I am unaware of any provision which mandates that all forty jurors be physically present in order to begin a term of court. The South Carolina Supreme Court in [State v. Jackson](#), 32 S.C. 27, 10 S.E. 769 (1890) ruled that the statute establishing the number of jurors drawn and summoned for a trial in circuit court does not require that the whole number of jurors drawn be present at the commencement of the trial. See also: [State v. Rasor](#), 168 S.C. 221, 167 S.E. 396 (1933). In [State v. Rogers](#), 263 S.C. 373 at 382, 210 S.E.2d 604 (1974), the Supreme Court stated:

‘ . . . a full venire is not a prerequisite to the commencement of a criminal proceeding. An accused has no right to insist upon the attendance of all veniremen directed to be summoned, nor to demand the presence of the maximum number of jurors provided for by statute to be drawn or summoned . . . (It) . . . is well settled that the defendant has no right to a trial by any particular jury or jurors and has the right only to a trial by a competent and impartial jury.’

Referencing the above, in the opinion of this office, in selecting jurors to consider a case tried during a term of magistrate's court, while there is no requirement that all forty jurors summoned be in attendance, there must be a pool of potential jurors which is sufficient to permit the free exercise of the maximum number of peremptory challenges and challenges for cause permitted by [§ 22-2-100](#), *supra*. In selecting jurors, attention should be directed to that provision of such section which states:

‘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.’

If there are any further questions, please advise.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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