

1979 S.C. Op. Atty. Gen. 99 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-76, 1979 WL 29081

Office of the Attorney General

State of South Carolina

Opinion No. 79-76

June 8, 1979

*1 Provisions regarding the method of jury selection in municipal courts are valid and meet the test of *State v. Warren*, filed May 21, 1979, except for certain designated municipalities which follow the procedures provided in magistrates' courts; procedures in these municipalities should be in accordance with their populations.

Uniformity of method of jury selection is not required by Article III, Section 34(7) or by Article V of the Constitution.

Mr. L. Edmund Atwater, III
Director
South Carolina Court Administration
Post Office Box 11788
Columbia, South Carolina 29211

Dear Mr. Atwater:

Your letter of June 4, 1979, requests the opinion of this Office as to whether or not there are any statutory provisions in this State for the drawing of juries in criminal cases in municipal courts which meet the criteria set forth in *State v. Warren*, filed May 21, 1979.

There are a number of statutes relating to the selection of juries in magistrates' courts which vary in their application to different cities and towns. In my opinion, these statutes are not violative of [Article III, Section 34, Subsection 7, of the Constitution of this State](#), which prohibits special laws for the summoning and impanelling of grand and petit juries. This provision has been held inapplicable to municipal courts. [City of Columbia v. Smith](#), 105 S.C. 348, 89 S.E. 1028. This decision is, in my opinion, still applicable in the present circumstances, irrespective of the adoption of Article V of the Constitution, which does not require uniformity of jury laws in inferior courts. The Constitution additionally requires that grand jurors and petit jurors be selected from qualified electors of good moral character. This provision may not be applicable to municipal juries in the light of *City of Columbia v. Smith*, but the inclusion of these criteria in the selection of municipal jurors is, in my opinion, an appropriate course to follow.

Additionally, the original statutes, adopted in 1916 and 1918, and now constituting Sections 14-25-510, *et seq.*, and Sections 14-25-610, *et seq.*, contained a specific repealer of prior statutes relating to the selection of such juries and was held to be the exclusive method provided for the selection of municipal juries in [State v. Stewart](#), 108 S.C. 401, 94 S.E. 874. The appropriate legislative committees now considering legislation regarding magistrates and municipal juries have been sent a memorandum by this Office which suggests that appropriate language be inserted to establish the procedure agreed upon as the exclusive method for the selection of juries in those courts. A copy of that memorandum is enclosed herewith.

The following statutes appear to be those relating to the selection of juries in municipal courts:

Juries in Municipalities of Less Than 5,000 (Sections 14-25-510, *et seq.*)

In my opinion, these Code sections meet the requirements of *State v. Warren*. In Section 14-25-530 and in other sections of the Code referred to *infra*, such phrases as 'the person appointed by the presiding officer' appear, and instructions

should be issued to the municipal courts that where a person other than the presiding officer is designated to participate in any phase of the jury selection, designation of the clerk of the recorder's court or the city clerk should be made. This will obviate the participation by law enforcement officers in the jury selection process and should eliminate any question arising by virtue of statements made in State v. Warren. This comment is applicable to subsequent similar provisions that may be contained in other statutes.

*2 The provisions of Section 14–25–510 are inapplicable to municipalities in Berkeley, Clarendon, Horry and Marion Counties and to the Cities or Towns of Bethune, Hemingway, Leesville, St. George, Saluda, Summerville, Woodruff and Barnwell. In each of those areas, the statutes require that juries be drawn ‘in the manner provided in magistrates' courts.’ In that jury selection procedures in magistrates' courts was discarded by State v. Warren, it is my opinion that in the identified towns, jury selection should be in accordance with the provisions governing the selection of juries in towns of less than 5,000 as provided in Section 14–25–510, with the exception of the Cities of Marion and Conway, each of which now contains more than 5,000 inhabitants, according to the latest census. In Marion and Conway, jury selection should be as provided for towns of more than 5,000. Sections 14–25–610, et seq. This conclusion is based upon the principle recognized in State ex rel. Thornton v. Wannamaker, 248 S.C. 421, 150 S.E.2d 607, that where an amendment to a statute has been held unconstitutional, the basic act should be followed.

Juries in Municipalities of Over 5,000 (Sections 14–25–610, et seq.)

In my opinion, these statutes meet the test of State v. Warren. In these courts, Section 14–25–650 contains the phraseology ‘or any other person appointed by the recorder’ and, in my opinion, municipal judges in such courts should be directed to designate only the city clerk or the court clerk. A general directive to all municipal judges instructing them that where it is permitted by statute to designate an individual to participate in the jury selection process, the municipal court clerk or the city clerk should be named.

Chester County

In my opinion, the procedure provided in Chester County is valid, subject to the issuance of the directive mentioned above.

City of North Charleston

The procedure for the selection of juries in municipal court is, in my opinion, a valid procedure.

City of Charleston

The procedure for the selection of municipal juries is essentially the same as for North Charleston and is, in my opinion, valid.

The foregoing constitutes, in my opinion, the various procedures for the selection of municipal juries in various towns and, except as noted, I see no infringement of the dictates of State v. Warren. I have identified some, but not all, of the phraseology, such as ‘any person appointed by the presiding officer’ contained in the various statutes, but I believe that any question can be removed by following the requirements of a directive which would provide that each municipal judge restrict his discretion in the designation of persons to participate in the jury selection process to the clerk of court or to the town clerk.

Very truly yours,

Daniel R. McLeod
Attorney General

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