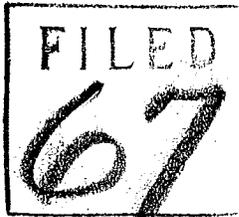


JURY COMMISSIONERS: No statute for jury commissioners
in Clay County.



February 14, 1955

Honorable Wm. Harrison Norton
Missouri House of Representatives
Jefferson City, Missouri

Dear Sir:

We have received your request for an opinion of this
office, which request reads as follows:

"We have another problem in Clay County
arising from the recent change of our
status from a third class county to a
second class county. I am respectfully
requesting your opinion as to the appli-
cability of the jury commission status
to our county.

"As I see it, Section No. 494.230 pro-
vides for the creation of the jury
commissioners in class three and four
counties.

"Sections 495.040 and 495.050 provide
for the appointment of the jury com-
mission in counties from 60,000 to
200,000 inhabitants.

"As you know the 1949 census gave Clay
County approximately 49,000 residents.
Our conservative estimates, to date,
give it as being 64,000. As I see it
there are no other provisions of the
Statutes that could be applicable to
our County inasmuch as it would appear
apparent that it was intended that
second class counties be included under
provisions of Chapter 495. It would
seem that this should be applicable to
our County. It is, of course, important

Honorable Wm. Harrison Norton

to our clerk, Mr. Clifford G. Hall, as it means five hundred dollars a year to him.

"At any rate, I would appreciate an official opinion from you regarding this matter, advising us under what section of the Statutes we are to select a jury commission."

As you have pointed out, Section 494.230 provides for a jury commission in counties of the third and fourth classes. Clay County became a county of the second class as of January 1, 1955, and therefore that section is no longer applicable to Clay County. Section 495.040, MoRS, 1953 Supp., provides:

"In every county of this state now containing or which may contain hereafter, according to the last preceding national census, not less than sixty thousand inhabitants nor more than two hundred thousand inhabitants, petit jurors for the circuit court and for the court having jurisdiction of felony cases, and also for any magistrate court having jurisdiction in such counties where the magistrate files written request with the jury commission board, shall be selected as in this chapter provided."

Section 495.050 then proceeds to set out the composition of the jury commission in such counties. The 1950 census showed a population for Clay County of 45,221, and therefore Sections 495.040 and 495.050 do not apply to Clay County. We find no other statute providing for the formation of a jury commission which is applicable to Clay County.

Section 8 of Article VI of the Missouri Constitution, 1945, provides as follows:

"Provision shall be made by general laws for the organization and classification of counties except as provided in this Constitution. The number of classes shall not exceed four, and the organization and powers of each class shall be defined by general laws so that all counties within the same class shall possess the same powers and be subject to the same restrictions. A law applicable to any county shall apply to all counties in the class to which such county belongs."

Honorable Wm. Harrison Norton

While this constitutional provision provides that a law applicable to one county shall apply to all counties in the class to which such county belongs, this provision does not have the effect of causing Section 495.040, above quoted, to become applicable to all counties of the second class. In view of the fact, however, that such section and sections subsequent thereto applicable to such counties do not apply to all counties of the second class, some question might arise as to the validity of that section under the above-quoted constitutional provision. See State ex inf. Taylor v. Kiburz, 357 Mo. 309, 208 S.W. (2d) 285. However, the invalidity of this section would not provide a section applicable to Clay County, and we therefore do not pass upon the validity of the section as it now stands. We do recommend, however, that appropriate legislation be enacted to cover all counties of the second class.

CONCLUSION

Therefore, it is the opinion of this office that there is now no statutory provision for the formation and composition of a board of jury commissioners for Clay County.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Robert R. Welborn.

Very truly yours,

JOHN M. DALTON
Attorney General

RRW:ml