

OPINION
71-46

September 1, 1971 (OPINION)

The Honorable R. Lee Hamilton

Municipal Judge

Grand Forks, ND

RE: Cities - Municipal Courts - Uniform Jury Act

This is in reply to your question whether or not the Uniform Jury Selection Act applies to municipal courts.

The legislative intent as set out in Section 27-09.1-01 states that it is the policy of the state that all persons selected for jury service be selected at random from a fair cross section of the population of the area served by the court.

Subsection 1 of Section 27-09.1-03 defines court to mean "the district court of this state, and includes, when the context requires, any judge of the court." Under this definition, only district courts and its judges are included when the term "court" is used.

It is also significant to note that the qualification form as set out in Section 29-09.1-07 contains among other things the question whether or not the individual is a citizen of the United States and a resident of the county. The disqualification from jury service as set out in subsection 2 of Section 27-09.1-08 provides that if a person is not a citizen of the United States, 21 years old and is not a resident of the state or county such person is disqualified.

Throughout the provisions of Chapter 27-09.1, we find no reference to other courts except in Section 27-09.1-21 we find that the judge of a district court or a judge of a county court of increased jurisdiction may use an undischarged jury panel summoned by the other court.

The qualifications to serve on either a district court or a county court of increased jurisdiction are similar. The jurisdiction of a county court of increased jurisdiction is countywide. The district court, of course, has greater jurisdiction, but when it is convened, it still convenes in the county.

The qualifications of a juror in a municipal court require that same be a resident of the municipality. In this respect, Section 40-18-16 has not been amended or repealed by implication. We would also note, even though it is not controlling, that the same Legislature that enacted the Uniform Jury Selection Act also amended Section 40-18-18. It still retained the language that the jury in a municipal court shall be entitled to a fee of \$4. However, the Legislature did not make any other substantive changes to indicate that the Uniform Jury Selection Act should apply to municipal courts. The juror under the Uniform Jury Selection Act is entitled to \$20 each day and \$8 for each day in attendance at justice court. It also provides that a

juror be entitled to \$8 for attending a coroner's inquest. See Section 27-09.1-14. We believe it is significant that when the Legislature spelled out the compensation for jury service it mentioned the district court, the county justice court and the coroner's inquest, but no mention was made of the compensation for jurors in municipal court.

No mention is made of municipal court in the Uniform Jury Selection Act. Under subsection 2 of Section 27-09.1-09 we find the following language:

"2. A judge of any court or any other state or county official having authority to conduct a trial or hearing with a jury within the county may direct the jury commission to draw and assign to that court or official the number of qualified jurors he deems necessary for one or more jury panels or as required by law for a grand jury. Upon receipt of the direction and in a manner prescribed by the court, the jury commission shall publicly draw at random from the qualified jury wheel the number of qualified jurors specified. The qualified jurors drawn for jury service shall be assigned at random by the clerk to each jury panel in a manner prescribed by the court."

The term "a judge of any court" might be construed to mean any court including the municipal court, but we must remember that the term "court" is a work of art and means the district court. Further, the language "or any other state or county official having authority to conduct a trial" apparently limits its application to state or county officials. A municipal judge is not a county or state official.

On the basis of the foregoing, it is our opinion that the Uniform Jury Selection Act is not applicable to municipal courts. However, we are not aware of any law which would prevent the municipal court from using the names of the municipality residents appearing on the master jury list. In this respect, the municipal judge who is required to prepare a list of 18 residents under Section 40-18-16 may select at random from the master list the names of the residents. In so doing, he would be satisfying the basic requirements of law. This is a matter of cooperation between the jury commission and the municipal court, but we cannot as a matter of law say that the jury commission must provide a separate list consisting of only residents of the municipality which otherwise appear on the master list.

HELGI JOHANNESON

Attorney General