

## **Opinion No. 69-52**

June 4, 1969

**BY:** OPINION OF JAMES A. MALONEY, Attorney General Vince D'Angelo, Assistant Attorney General

**TO:** Hon. E. H. Williams, Jr., District Attorney, Third Judicial District, Dona Ana County Courthouse, Las Cruces, New Mexico

### **QUESTIONS**

#### **FACTS**

Chapter 222, Laws of 1969, relating to the selection of jurors for the district courts, becomes effective July 1, 1969. The next term of court for the Third Judicial District is scheduled to begin July 14, 1969. The presently qualified jury panel would normally serve until the next term of court begins. A jury trial is scheduled to begin on July 9, 1969.

#### **QUESTIONS**

1. Does the current jury panel have jurisdiction of legal standing to hear and decide the jury trial scheduled for July 9, 1969?
2. If not, does the law require the selection of new juries pursuant to Chapter 222 as of July 1, 1969, and if selected, what maximum term could these newly selected jurors serve? Can their term of service differ from the Court term?
3. Is it necessary to discard all names presently in the jury wheel and to select and pull new names pursuant to the provisions of Chapter 222?

#### **CONCLUSIONS**

1. No.
2. See Analysis.
3. See Analysis.

### **OPINION**

#### **{\*77} ANALYSIS**

We shall consider all questions together. Chapter 222, Laws of 1969 repeals inter alia that portion of Section 19-1-10, N.M.S.A., 1953 Compilation, which states:

"Provided, that all proceedings heretofore had in any district court of this state in the preparation of the list of voters and the selection of names therefrom by the jury commission and the making up of the list of jurors and filling the jury box of wheel and drawing names therefrom pursuant to the laws in effect immediately prior to the passage of this act shall be and remain valid until selection of names of persons to serve as jurors shall be made in accordance with the provisions of this act."

The failure of the legislature to reenact a similar provision indicates an intent to disqualify, after July 1, 1969, all jury panels select from lists not prepared in accordance with the provisions of Chapter 222, Laws of 1969. A second indication of this intent can be found in the Memorandum Relating to Jury Selection Bill presented to the legislature prior to their vote on the new measure. In its pertinent part it provides:

"SECTION 18. EFFECTIVE DATE. -- **July 1, 1969 was selected to give the courts time to make the changes** and to {\*78} coincide with the judicial administration change over effective at that time." (Emphasis supplied)

A primary reason for choosing July 1, 1969 as the effective date was to provide a reasonable time for the various District Courts to conform with the provisions of Chapter 222, Laws of 1969. Therefore, it is our opinion that any jury panel selected from lists prepared in accordance with the provisions of the repealed act will be disqualified after July 1, 1969. Juries sitting after that date should be selected in accordance with the provisions of Chapter 222, Laws of 1969, and names presently in the jury wheel should be discarded.

The term of service of jurors is to be determined by the district judge. The term shall not exceed 6 months, but, it may differ from the term of the court. Section 12, Chapter 222, Laws of 1969 provides:

"19-1-12. PETIT JURY PANELS -- NUMBER TO BE QUALIFIED -- PERIOD OF SERVICE -- TIME FOR SUMMONING. -- The district judge shall determine the number of jurors to be summoned for service, the date and time for the appearance of jurors for qualification, the number of jurors to be qualified to provide panels of jurors for trial service, the size of trial jury panels and the length of time jurors are retained for service. No person may be required to remain as a member of a petit jury panel for longer than six months following qualification as a juror. Jurors may be drawn, summoned and qualified by the district judge at any time to supplement jury panels requiring replacement or augmentation. Petit jury panels may be qualified and may serve as the trial needs of the district court requires without regard to court terms."

Therefore, it is our opinion that all juries sitting after July 1, 1969 must be drawn from lists prepared in accordance with the provisions of Chapter 222, Laws of 1969. A jury so selected could hear the jury trial scheduled for July 9, 1969.