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JUSTICE BUILDING, LITTLE ROCK 72201

(501) 371-2007

March 15, 1985

OPINION NO. 85-82

Honorable Gene Raff
Prosecuting Attorney
First Judicial District
417 Rightor Street
Helena, Arkansas 72342

Dear Mr. Raff:

Your deputy, Fletcher Long, posed the following question:

May a venire, for example, for an October term of Court to be selected by computer from the then current voter registration list or must the computer only be used in the compilation of the master list which is made up in October or November (sic) of each year?

The question is in reference to Ark. Stat. Ann. §§39-205.1 and 39-205.2 (Supp. 1983). §39-205.1 provides in pertinent part that:

During the month of November or December of each year, the prospective jurors for the following calendar year shall be selected from among the current list of registered voters of the applicable district or county. . . .

§39-205.2 provides that all circuit clerks who maintain voter registration lists on computers may utilize such computers for the purpose of selecting jury panels from the voter registration list. I interpret your question to be two-fold. First, you ask whether a "venire" may be selected by the computer from the then current voter registration list for an October term of court. Second, you ask whether the computer must only be used in compilation of the master jury list.

In answer to your second question, it is my opinion that §39-205.2 only authorizes the use of computers in the preparation of the master list of prospective jurors for

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the next calendar year. I do not read §39-205.2 to authorize the use of computers in place of the jury wheel or jury box selection process as outlined in Ark. Stat. Ann. §§39-206 and 39-209.1 (Supp. 1983). §39-205.2 plainly states that the clerk may use the computer for the purpose of selecting jury panels from the voter registration list. Venires are chosen from the master list of prospective jurors by use of the jury wheel or jury box system, not directly from the voter registration list.

Thus, in response to your first question, it is my opinion that the computer may not be used to select a venire from the then current voter registration list for an October term of court. You indicate that it would be preferable to use an updated voter registration list in selecting venires which would coincide with each new term of court in order to avoid having the names of those people in the master jury list who have since died, moved, or been purged from the voter registration list. However, such a procedure would be in contravention of the language of §39-205.1, that in November or December, the prospective jurors for the following calendar year shall be selected from among the current list of registered voters. Thus, the master list of prospective jurors prepared in November or December is required to be used for the following calendar year.

Similar language in the predecessor statute to §39-205.1 was held to be mandatory and not directory. See, Horne v. State, 253 Ark. 1096, 490 S.W.2d 806 (1973). There the Arkansas Supreme Court noted that:

[Act 568 of 1969] requires the trial judge on or before November 1st of each year to appoint . . . jury commissioners and specifically commands the jury commissioners to select as prospective jurors, "for the following calendar year," not less than 500 persons (for Grant County) from among the registered voters.

* * *

While we must admit that the trial court's deviation in the selection of the jury is a rather practical approach to an arduous task in a county with a small population, in view of the many successful attacks that were

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being made on our jury selections prior to the passage of Act 568, we cannot construe the language thereof as directory only.

Horne at 1098-99. Thus, the requirement that prospective jurors be chosen from the list of registered voters for the following calendar year was held to be mandatory.

While the procedure that you suggest for selecting a venire for the October term of court has practical merit, it would apparently not comply with Arkansas' present statutory scheme for jury selection and could subject venires so chosen to being quashed. I also point out that Ark. Stat. Ann. §39-209.1 (Supp. 1983), regarding the drawing of venires from which petit juries are chosen, provides that:

. . . . As the names are drawn they shall be recorded in the same order by the Circuit Clerk in a book to be provided for that purpose, and if the name of any person known to have died or found by the Court upon inquiry to be unfit and disqualified under Section 2 of Act 568 of the Acts of the General Assembly of Arkansas, 1969 (Ark. Statutes 39-102) said name shall be put aside and not used and a notation of the discarding of the name and reason therefor shall be made in the Jury Book.

Thus, it would appear that there is already a procedure in place that allows for removal of names of persons who have died, etc. from the master jury list contained in the jury wheel or jury box.

Finally, I note that the overall scheme for the selection of juries is set up to ensure secrecy and security in order to avoid tampering or interference with the process of jury selection. The master list of prospective jurors is chosen for a one year period of time in order to effectuate the integrity of that process. There is no reason why the system could not be altered to have the list of prospective jurors prepared for use beginning in October rather than January, but such a change would have to be accomplished by amendment of the current statute.

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This opinion which I hereby approve, was prepared
by Assistant Attorney General Jack Gillean.

Respectfully submitted,



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Attorney General

SC:JG:jh

cc: Honorable Fletcher Long, Jr.