

Jury Panel, How Chosen.

Where a county was organized after all proceedings for the assessment and collection of the current taxes was completed, the jury commission was held to be justified in choosing the panel from the assessment list made up by the county assessor of the new county for the year in which the jury was chosen.

August 10, 1915.

Hon. D. F. McGrath, Jr.,
County Attorney,
Malta, Montana.

Dear Sir:

You have had up with this office both by letter and by personal interview the question of the method by which a jury shall be chosen for Phillips County. It appears that Phillips County was organized in February, 1915, and that sometime thereafter a jury commission met and chose a list of jurors taken from the assessors' field books, furnished by assessors of Blaine and Valley Counties, and the registration list. A challenge was entered by certain defendants in criminal actions to the whole panel upon the ground that it was not chosen in accordance with law, which challenge was sustained by the court.

Upon the date on which Phillips County was created, all proceedings for the levy, assessment and collection of taxes in Blaine and Hill Counties, from which Phillips County was taken had been completed. There was, therefore, no occasion for the certification by the officers of Hill and Blaine Counties to the officers of Phillips County of the proceedings taken for the assessment and levy of taxes by the parent counties, under the provisions of Section 9, Chapter 133, Laws of 1913, under which Phillips County was created. The regular time for drawing the jury panel by the jury commission is fixed by Section 6342, Revised Codes of Montana, 1907, as the second Monday of January of each year. In the nature of things this was impossible in the case of Phillips County, for Phillips County did not exist at this date. The

provisions of our statutes as to the drawing of juries have been construed by our Supreme Court, and they say:

"Section 9247 comprehends two separate grounds for a challenge to the panel. First, material departure from the law in drawing or returning a jury. With respect to that ground this court has had occasion to comment frequently. It has been held uniformly that substantial compliance is required, and anything less will vitiate the work of procuring a jury. (*Dupont v. McAdow*, 6 Mont. 226, 9 Pac. 925; *State ex rel Root v. McHatton*, 10 Mont. 370, 25 Pac. 1046; *State v. Landry*, 29 Mont. 218, 74 Pac. 418). But not every deviation, however slight, from the strict letter of the law in drawing or returning a jury will furnish ground for challenge to the panel. The statute in terms requires that the departure must be a material one. (*State v. Tighe*, above).

At the present time we may leave out of consideration the propriety of choosing a jury in the method used by your jury commissioners in choosing the array which was challenged; for since that date, the conditions have changed, and Phillips County does not now have to look to Blaine and Hill Counties for an assessment roll. The provisions of the Code designating the list from which juries shall be chosen, are Sections 6342 and 6343, Revised Codes of 1907, which reads as follows:

"At the meeting, specified in the last section, the officers present must select from the last assessment roll of the county, and make a list of the names of all persons whom they believe to be competent and qualified to serve as trial jurors, as prescribed in the last article."

The law as will be seen, requires that the jury list be selected from the last assessment roll of the county in which it is being selected. The last in this case means latest. The conclusion, therefore, is that the jury commission of Phillips County should meet and select from the latest assessment roll to which they have access, that is the assessment roll made up for this year, persons suitable for jury duty. This assessment roll is not only the last or latest, but it is the only one known to Phillips County, because, as pointed out above, the taxation for 1914 was completed in the parent counties at the time Phillips County came into existence, and there was nothing upon the records of the old counties necessary to be certified to the new counties under the provisions of Section 9 of Chapter 133 of the Session Laws of the Thirteenth Legislative Assembly, and consequently Phillips County at the time it came into existence was without an assessment roll.

I am aware of one decision which might be cited as contrary to the conclusion here reached. The State of Kansas provides that the jury commission in that state "shall select from those assessed on the assessment roll of the preceding year, suitable persons, etc." In construing this section, the Supreme Court of Kansas held.

"Where the statutes specifically provides the class or list of persons from which the jurors are to be selected, the failure to draw jurors from such class or list is sufficient ground to quash the panel."

State v. Jenkins, 32 Kan. 477.

and held further that the jurors should have been drawn from the assessment list of the preceding year (1882), and not from that of the year in which the court was held (1883). A comparison of the two statutes, however, shows a difference in the language used, and the case, cannot, therefore, be considered as in point.

Yours very truly,

J. B. POINDEXTER,

Attorney General.