

**OPINION
71-134**

August 25, 1971 (OPINION)

Mr. Clifton M. Anderson

Clerk of District Court and Judge of County Court

Divide County

RE: Courts - Jurors - Age

This is in response to your letter in which you state as follows:

This office would appreciate a written opinion from your office regarding Section 27-09.1-08 subsection 2(a), North Dakota Century Code regarding the age of jurors.

Due to recent federal legislation when the voting age has been lowered to 18 years, would this have any bearing on the above section and also on Section 14-03-17 subsection 1, regarding age of males on application for marriage licenses?"

Through Chapter 304, the Uniform Jury Selection and Service Act was adopted which is now codified as Chapter 27-09.1. It also repealed Chapter 27-09.

Section 27-09.1-07 states the legislative intent as follows:

"LEGISLATIVE INTENT. The legislature of the state of North Dakota hereby declares that it is the policy of this 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, and that all qualified citizens have the opportunity in accordance with this chapter to be considered for jury service in this state and an obligation to serve as jurors when summoned for that purpose."

It is apparent from this provision that the Legislature intended to use a fair cross section of the population of the area served by the court from which jurors would be selected. We further note that the legislative intent also uses the term "and that all qualified citizens have the opportunity and are given the opportunity to discharge their obligation to serve as jurors." The section refers to population and qualifying citizens which clearly indicates that the qualifications of a juror must be found within the provisions of Chapter 27-09.1.

Section 29-09.1-09 provides that the jury commission shall maintain a qualified jury wheel on which shall be placed the names or identifying numbers of all prospective jurors drawn from the master jury wheel who are not disqualified under Section 27-09.1-08.

We find that the term "qualified jury wheel" is similarly defined in subsection 7 of Section 27-09.1-03.

We also find that a juror qualification form is provided for in Section 27-09.1-07.

The clear thought emerges and prevails from reading the Uniform Jury Selection Act that initially a master list is compiled and maintained. Such list shall consist of actual voters supplemented with names from other lists of persons residing within the area such as utility customers, property taxpayer, motor vehicle registrations, and driver's licenses, as the Supreme Court from time to time may designate. The master list itself is not determinative of whether or not such individual is qualified to serve as a juror.

The basic proposition appears to be that all persons appearing on such list are qualified unless they are disqualified for the reasons stated in Section 27-09.1-08.

An age limit, particularly in the lower bracket, is necessary because it is conceivable that a taxpayer could actually be a person who has not yet reached the age of reason. Similarly, a person can be a resident regardless of age. The voter list will contain a greater number of names as a result of the adoption and ratification of the Twenty-sixth Amendment making all eighteen-year-old individuals eligible to vote. Particularly as the result of the Twenty-sixth Amendment, all eighteen-year-olds who vote should appear on the master list.

We are aware that the Legislature amended Section 14-10-01 and has now defined a minor to be a person under 18 years of age and in Section 14-10-02 has defined adults as all persons of 18 years of age. However, the Legislature still required that a person be of a certain minimum age to be eligible to participate or do certain things. For example, marriage can be entered into by a male if he is under 21 years of age only with the consent of his parent or guardian, but does not require such consent if he is 21 years of age. (See Section 14-03-17.) Similarly, a person under 21 years of age may not purchase or possess alcoholic beverages.

The ratification of the Twenty-sixth Amendment does not automatically change the age qualification for a juror. The right to vote and the privilege and obligation to serve as a juror are not correlative or necessarily coexistent. (See 47 Am. Jur.2d. 711 Section 102.)

47 Am. Jur.2d. page 708 Section 97 also states that a court may not add or detract from the qualifications of a juror. This would also apply to the Attorney General's Office. This leaves a clear implication that the qualifications of a juror are basically a legislative function and if the Legislature does not set forth qualifications which are in violation of the Fourteenth Amendment of the United States Constitution, such qualifications will not be arbitrarily set aside.

It is interesting to note that with the ratification of the Nineteenth Amendment granting suffrage to women did not make them automatically eligible for jury duty. (See Commonwealth v. Welosky, 177 N.W. 656. Cert. Den. 76 L.Ed. 578.) The same legal principles and concept would have application to the Twenty-sixth Amendment.

The main objective in selecting jurors is to use a procedure by which persons are selected and chosen impersonally, methodically and by equal chance from the whole body of the county or district in which such persons are to serve.

The U. S. Supreme Court in *Carter v. Green County*, 24 L.Ed.2d. 549, said that the states are free to confine "the selection to citizens, to persons meeting specified qualifications of age and educational attainment, and to those possessing good intelligence, sound judgment and fair character." (underscoring ours) The court continued by saying "our duty to protect the federal constitutional rights of all does not mean we must or should impose on states our conception of the proper source of jury lists, so long as the source reasonably reflects a cross section of the population suitable in character and intelligence for that specific duty."

The North Dakota Supreme Court on August 2 issued an order directing that the list of persons holding driver's licenses issued to drivers in each of the 53 counties of this state who are residents of the state and county shall be an additional list to supplement the list of actual voters and be placed on the master list. No mention of age is made presumably because the statute designates the age.

The disqualification for jury service as set out in Section 27-09.1-08 including age factor do not appear to run contrary to any principle of law announced by the Supreme Court of this state or the United States Supreme Court. The case law on this subject would support such legislative act rather than question same.

Section 27-09.1-08(2)(a) provides as follows:

- "2. A prospective juror is disqualified to serve on a jury if he:
 - a. Is not a citizen of the United States, twenty-one years old, and a resident of the state and county;"

The language leaves a clear and precise thought and is not subject to construction. Neither do we believe that the Twenty-sixth Amendment for the Federal Voting Rights Act or any other legislation adopted by the North Dakota Legislature by implication repeals its provisions.

It is therefore our opinion that the requirement that a person be twenty-one years of age to serve on a jury in addition to the other requirements is a valid provision and that the ratification of the Twenty-sixth Amendment does not automatically change the age for jurors from 21 to 18 years.

HELGI JOHANNESON

Attorney General