



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

September 19, 1961

Honorable Guilford L. Jones
District Attorney
County Courthouse
Big Spring, Texas

Opinion No. WW-1143

Re: Whether in a jury wheel county, where the court has granted a motion for a special venire in a capital case, and where the venire as drawn from the wheel, is exhausted, additional veniremen are drawn from the wheel, or are summoned as talesmen by the sheriff?

Dear Mr. Jones:

Your request for the opinion of this office reads in part as follows:

"In a jury wheel county, where the court had granted a motion for a special venire in a capital case, and where the venire as drawn from the wheel, is exhausted, are additional veniremen drawn from the wheel, or are they summoned as talesmen by the sheriff?

"This case seems to be governed by Article 596 C.C.P. It is the opinion of the undersigned that the words 'and upon such refusal' in Article 601-A limits this Statute in its application to those cases where the court has refused a motion for special venire.

"In Coy v. State 288 SW2d 782, the court held that additional veniremen should have been drawn from the wheel. In Moon v. State 331 SW2d 312, the court indicates that Coy is no longer the law and that 601-A now requires talesmen to be selected by the sheriff."

Article 601-A, V.C.C.P., was amended in Chapter 327, Acts of the 55th Legislature, R.S., 1957.

It now reads as follows:

"In all counties of this State where jurors in either civil or criminal cases are drawn from a jury wheel as is now provided or may hereafter be provided by law and where as many as one hundred (100) jurors have been summoned in such county for regular service for the week in which such capital case is set for trial, the Judge of the Court having jurisdiction of a capital case in which a motion for a special venire has been made, shall grant or refuse such motion for a special venire and upon such refusal require the case to be tried by regular jurors summoned for service in such county for regular service for the week in which such capital case is set for trial and such additional talesmen as may be summoned by the Sheriff upon order of the Court as provided in Article 596 of the Code of Criminal Procedure, but the Clerk of such Court shall furnish the defendant or his counsel a list of the persons summoned for jury service for such week upon application therefor."

The amendatory Act in 1957 recited in finding that an emergency existed:

"The fact that confusion exists over the proper method of selecting jurors in capital criminal cases and the need for this legislation for the speedy administration of justice create an emergency. . . ."

Article 596, V.C.C.P., reads as follows:

"On failure from any cause to select a jury from those summoned upon the special venire, the court shall order the sheriff to summon any number of men that it may deem advisable, for the formation of the jury."

If a special venire is exhausted, the Sheriff is to be sent for talesmen. Art. 596, V.C.C.P.

If a special venire is refused, in a county to which Article 601-A, V.C.C.P. applies, the jury shall be chosen from among the:

". . . regular jurors summoned for service in

such county for regular service for the week
in which such capital case is set for trial
. . ."

If these jurors are exhausted, Art. 601-A, V.C.C.P.
provides that talesmen shall be summoned as provided in Art.
596 V.C.C.P.

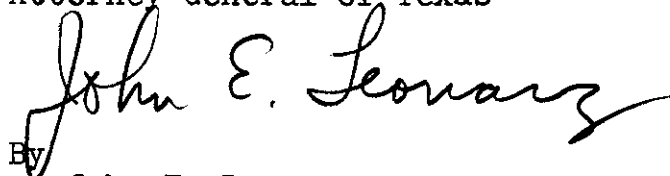
It follows that in a capital case in a jury wheel
county, when the first panel of jurors is exhausted, whether
drawn as a special venire or from regular sources, the procedure
to be followed is as set forth in Art. 596, that is, that the
sheriff should summon such additional talesmen as are needed
to complete the jury. Moon v. State, 331 S.W.2d 312 (Tex.Crim.
1960.)

SUMMARY

In a jury wheel county, where the court has
granted a motion for a special venire in a
capital case, and where the venire as drawn
from the wheel, is exhausted, additional venire-
men are to be summoned as talesmen by the sheriff.

Sincerely yours,

WILL WILSON
Attorney General of Texas



By
John E. Leonarz
Assistant Attorney General

JEL/br

APPROVED:

OPINION COMMITTEE:
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Riley Eugene Fletcher
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REVIEWED FOR THE ATTORNEY GENERAL
By: Houghton Brownlee