

Creation of jury districts

Number: INFORMAL

Date: February 09, 1999

The Honorable John Dean Moxley, Jr.
Chief Judge, Eighteenth Judicial Circuit
Brevard County Courthouse
506 South Palm Avenue
Titusville, Florida 32796

RE: JURORS--COURTS--creation of jury districts. s. 44.015, Fla. Stat.

Dear Judge Moxley:

You ask several questions regarding the implementation of jury districts. Attorney General Butterworth has asked me to respond to your letter.

Your first question asks whether section 40.015, Florida Statutes, permits the exclusion of approximately four percent of potential jurors whose race is unknown or who have invalid zip codes in the Department of Highway Safety and Motor Vehicles database, when determining the racial configuration of jury districts.

Section 40.015, Florida Statutes (1998 Supplement), provides:

"(1) In any county having a population exceeding 50,000 according to the last preceding decennial census and one or more locations in addition to the county seat at which the county or circuit court sits and holds trials, the chief judge, with the approval of a majority of the county commissioners, is authorized to create a jury district for each courthouse location, *from which jury lists shall be selected in the manner presently provided by law*. The creation of a jury district under this section may be initiated by either the chief judge or a majority of the county commissioners.

(2) In determining the boundaries of a jury district to serve the court located within the district, the chief judge or the board of county commissioners shall seek to avoid any exclusion of any cognizable group. Each jury district shall include at least 6,000 registered voters." (e.s.)

You state that the court in Brevard County is interested in creating three jury districts. One district would be comprised of the county as a whole with jurors called to jury duty at the Moore Justice Center in Viera, the second jury district would be comprised of citizens from the northern section of Brevard County who would be called for jury duty at the Titusville Courthouse, and the third district would be made up of the southern section of the county with jurors called for jury duty at the Melbourne Courthouse.

Potential jurors are drawn from a list provided by the Department of Highway Safety and Motor Vehicles. The list, however, includes people who have not stated their race on their driver's

license application and whose race, therefore, is unknown. You state that the list also includes people who have provided a zip code that is not located in Brevard County.

According to your letter, the court, in determining the boundaries of the jury districts, has sought to avoid the exclusion of any cognizable group by making sure that the north and south jury districts each have the same racial configuration as the county as a whole. This has been done by looking at the racial configuration of each zip code and dividing the zip codes among jury pools so that the racial configuration of each district matches that of the county. In doing so, however, you state that approximately four percent of the potential jurors, whose race is unknown or whose zip code indicates that they do not reside within the county, have been excluded.

In *Spencer v. State*,^[1] the Supreme Court held that jury districts created under section 40.015, Florida Statutes, must "reflect a true cross-section of the county, with no systematic exclusion of any group in the juror selection process[.]" The Court held that the statute, in authorizing the creation of jury districts, does not change the jurisdiction of the courts but only implements the utilization of branch court facilities for purposes of convenience and economy.

The *Spencer* Court concluded that the constitution did not mandate that jurors be selected from the whole county but, rather, that the venue of the trial be in the county where the crime was committed. Thus, the Court determined that the statute could be implemented with an administrative order which establishes districts and jury pools that reflect a true cross-section of the county, with no systematic exclusion of any group in the juror selection process, and that does not otherwise violate equal protection constitutional requirements.

Even though the *Spencer* Court found no intentional discriminatory conduct in the creation of the jury districts, it concluded that the effect of the administrative order removed from the jury pool a significant concentration of the black population of Palm Beach County, specifically seventeen percent of that population. Thus, the order resulted in an unconstitutional systematic exclusion of a significant portion of the black population from the jury pool for the West Palm Beach district.

This office has no authority to approve the drawing of jury districts. Such a question involves mixed questions of law and fact that this office cannot resolve. The exclusion of approximately four percent of the potential jurors from consideration in setting the jury districts because their race was unknown, however, does not appear to constitute an intentional exclusion of an identifiable group from the jury pool.

While the *Spencer* Court was concerned with discrepancy in racial statistics, it is not clear that race is the only criteria a court might use in examining the integrity of jury districts. As noted above, the *Spencer* Court concluded that jury districts created under section 40.015, Florida Statutes, must "reflect a true cross-section of the county, with no systematic exclusion of any group in the juror selection process[.]" It is possible, therefore, that the courts might examine other criteria such as socio-economic disparities in evaluating jury districts. Moreover, prior to excluding potential jurors on the basis of their zip codes, an effort should be made to ensure that the address of such individuals, not merely the zip code, indicates they live outside the county.

The creation of jury districts, therefore, appears problematic and it may be advisable to seek

legislative clarification on this issue.

Your second question concerns the authority of the Department of Highway Safety and Motor Vehicles to collect race data on a mandatory basis. The department has apparently expressed concern about its authority to require such information from applicants for driver's licenses. In the absence of a request from the department regarding its authority but in an effort to be of assistance, I would make the following informal observations. As an administrative agency, the powers of the department are limited to those expressly granted by the statutes or acts creating it and those which by fair implication are necessary to carry out the powers expressly granted.[2]

Section 322.08, Florida Statutes, sets forth the information to be contained in an application for a driver's license.[3] I am not aware of any provision requiring the department to collect information regarding race from driver's license applicants nor is it clear that the collection of such information is necessary for the department to carry out its responsibilities in the issuance of driver's licenses. Thus, in the absence of statutory authorization, the department's authority to require such information from applicants would appear to be questionable.

You also ask whether section 40.022, Florida Statutes, permits those names that do not have zip codes located in Brevard County to be purged from the list of potential jurors provided by the Department of Highway Safety and Motor Vehicles. Section 40.022(1) provides:

"Each clerk of the circuit court shall, upon receipt of the list of persons in the department database from the Department of Highway Safety and Motor Vehicles and at least once each month thereafter, purge the jury selection lists of the names of those persons:

- (a) Adjudicated mentally incompetent;
- (b) Convicted of a felony; or
- (c) Deceased."

The above statute does not provide for purging those persons who do not have a zip code within the county. The purging of names of those not eligible to serve, however, would appear to be a ministerial or clerical task requiring no exercise of discretion.[4]

The jury list supplied to the clerk of the circuit court in each county by the Department of Highway Safety and Motor Vehicles is to "*include only the names of persons* who are citizens of the United States and legal residents of Florida and *whose address is in that county* and who are 18 years of age or older." [5] (e.s.) While section 40.022(1), Florida Statutes, does not specifically provide for the clerk to purge the names of persons not living within the county, common sense would dictate that the clerk would not be required to call an individual who does not reside in the county.

I trust that the above informal advisory comments may be of some assistance to you in resolving these issues.

Sincerely,

Joslyn Wilson

[1] 545 So. 2d 1352, 1355 (Fla. 1989).

[2] *See, e.g., State, Department of Environmental Regulation v. Falls Chase Special Taxing District*, 424 So. 2d 787, 793 (Fla. 1st DCA 1982), *pet. for rev. den.*, 436 So. 2d 98 (Fla. 1983); *Gardinier, Inc. v. Florida Department of Pollution Control*, 300 So. 2d 75 (Fla. 1st DCA 1974) (powers of statutory agency are not inherent but derivative only and are limited to those expressly or by necessary implication granted by statute).

[3] *See, e.g., s. 322.08(2), Fla. Stat.*, stating that the application shall reflect the full name, proof of identity, proof of birth date, sex, social security number, residence and mailing address, and brief description of the applicant.

[4] *See Thomas v. State*, 223 So. 2d 318 (Fla. 1969), vacated in part on other grounds, 92 S.Ct. 2855, 408 U.S. 935, 33 L.Ed.2d 750 (1972), which considered the authority of the supervisor of elections to delete names of persons who were disqualified by law from jury service and persons adjudged mentally incompetent or who had moved away or died, from list of qualified voters when the jury list was selected from registered voters and prior to the enactment of section 40.022, Florida Statutes. The court held that the supervisor's authority was purely ministerial or clerical duty requiring no exercise of discretion.

[5] *And see s. 40.01, Fla. Stat.*, setting forth the qualifications of jurors and stating:

"Jurors shall be taken from the male and female persons at least 18 years of age who are citizens of the United States and *legal residents of* this state and their *respective counties* and who possess a driver's license or identification card issued by the Department of Highway Safety and Motor Vehicles pursuant to chapter 322 or who have executed the affidavit prescribed in s. 40.011." (e.s.)