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Honorable Nick Abbett
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Grand Juries – Circuit Judges – District Attorneys

The language in section 12-16-190 is directory and not mandatory, but substantial compliance is required. Thus, the judicial officials in Lee County have the discretion to determine the number of grand juries to be empaneled during the calendar year and may empanel less than four if the deviations are justified by temporary lack of budgetary resources or reductions in caseload.

Dear Mr. Abbett:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

(1) Are the provisions for selection and empaneling grand jurors, particularly section 12-16-190, merely directory and not mandatory as suggested in *Wyres v. State*, 29 So. 2d 155 (Ala. Ct. App. 1947)?

(2) May a Lee County circuit judge lawfully exercise discretion in the number of grand

> juries empaneled in any calendar year by empaneling less than four in a calendar year?

FACTS AND ANALYSIS

Your request states that, in an effort to reduce costs associated with empaneling grand and petit jurors in Lee County, and in consideration of current economic conditions, judicial officials have proposed that the minimum number of grand jury sessions be reduced below four, the number directed by section 12-16-190 of the Code of Alabama, for the calendar year 2010. Lee County has a population over 50,000.

Section 12-16-190 of the Code states as follows:

> (a) There shall be empaneled in every county having less than 50,000 population not less than two grand juries in every year; and, when they have completed their labors, in its discretion, the court may permit them to take a recess subject to the call of the judge of the circuit court or Chief Justice of the Supreme Court, and they may be reassembled at any place where the circuit court of the county is to be held.
>
> (b) In all counties having over 50,000 population, there shall be empaneled not less than four grand juries in every year.

ALA. CODE § 12-16-190 (2006).

The Alabama Court of Appeals addressed whether the requirement for empaneling four grand juries found in this section is directory or mandatory when an appellant argued that his indictment should be dismissed for failure of the State to empanel four grand juries. The State empaneled only two grand juries in Tuscaloosa County. The Court stated as follows:

> In the first place, the provisions for the selection, drawing, summoning, or impaneling of jurors are ***directory merely, and not mandatory***. Section 45, Title 30, Code of Alabama 1940 [section 12-16-90]. It is our opinion that the provision of Section 72, Title 30, Code of

> Alabama 1940 [section 12-16-190(b)] to the effect that in counties of over fifty thousand population there shall be impaneled not less than four grand juries a year was merely for the convenience of the citizenry of the more populous counties, and seeks to relieve the individual grand jurors from too great a personal sacrifice growing out of grand jury duty by providing, if needed, for four grand juries a year. If in the discretion of the circuit judge the business before the grand jury had not been of sufficient volume to unduly burden the members, by consuming too much of their time from personal affairs, then due regard for governmental economy and efficiency would dictate the continued use of a legally impaneled grand jury if its legal life had not been terminated by discharge or operation of law.

Wyres v. State, 32 Ala. App. 630, 633, 29 So. 2d 155, 158 (1947) (emphasis added).

Although the Court of Appeals in *Wyres* overruled the appellant's argument that he was entitled to dismissal of his indictment for failure of the State to empanel a sufficient number of grand juries within the year, subsequent appellate opinions have held that, while not mandatory, the statutes concerning jury selection do require substantial compliance. *Brewer v. State*, 440 So. 2d 1155 (Ala. Crim. App. 1983); *Lehr v. State*, 398 So. 2d 791 (Ala. Crim. App. 1981). Thus, the judicial officials in Lee County have the discretion to determine the number of grand juries to be empaneled during the calendar year and may empanel less than four if the deviations are justified by temporary lack of budgetary resources or reductions in caseload.

CONCLUSION

The language in section 12-16-190 is directory and not mandatory, but substantial compliance is required. Thus, the judicial officials in Lee County have the discretion to determine the number of grand juries to be empaneled during the calendar year and may empanel less than four if the deviations are justified by temporary lack of budgetary resources or reductions in caseload.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING
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By:

BRENDA F. SMITH
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