



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. S-287

COUNTIES:
Jury Selection

Honorable Max B. Stewart
State's Attorney
Hancock County
Carthage, Illinois 62321

Dear Sir:

I have your recent letter wherein you state:

"I have a question in regard to the proper manner of the selection of petit jurors in this county.

"Our county does not have jury commissioners and my question is in regard to the interpretation of the following paragraph:

"Chapter 78, Jurors, paragraph 5. At the time of making such selection, the name of the person selected shall be checked off from such list, and shall not be again selected as a juror till every person named upon such list qualified to serve as a juror has been selected; and all subsequent selections of jurors by such board shall be made from

such list until all persons thereon qualified to serve have been selected, or until the expiration of two years from the time of the making of such list, when a new list shall be made: Provided, if any person who has been selected as a juror shall not have been drawn, or have served upon a jury during the year for which he was selected, he shall, if qualified, be selected for the next year."

"Our Circuit Court has entered an order that 400 names be selected from the 10% jury list each year by the Board of Supervisors and placed in the jury box.

"The basic question I have is whether or not at the time of making out the new 10% list of jurors from the county by the Board of Supervisors if the names of those selected in the jury box at the end of 2 years are discarded and a new list of 400 is put in the box, or, should the clerk retain those names in the box who have not been selected and keep adding a new list of 400 names every year.

"The basic problem seems to be with the proviso in the above section and whether or not this directs that the names not drawn from the jury box continue in there indefinitely or should the old names be discarded in the box every 2 years and a new list of 400 be placed in the box from the new 10% jury list."

As you have indicated in your letter, Paragraph 5 of Chapter 78, 1969 Illinois Revised Statutes states as follows:

"At the time of making such selection, the name of the person selected shall be checked off from such list, and shall not be again selected as a juror till every person named upon such list qualified to serve as a juror has been selected; and all subsequent selections of jurors by such board shall be made from such list until all persons thereon qualified to serve have been selected, or until the expiration of two years from the time of the making of such list, when a new list shall be made: Provided, if any person who has been selected as a juror shall not have been drawn, or have served upon a jury during the year for which he was selected, he shall, if qualified, be selected for the next year."

You have inquired as to whether or not the clerk at the time of making out a new 10% list of jurors at the end of two years should retain those names in the box who have not been selected and keep adding a new list of 400 names every year. In order to answer this question it is necessary to determine the legislative intent. The statute does not expressly answer your question. Necessary implications and intendments from the language used in a statute may be resorted to in order to ascertain the legislative intent. See U.S. v. Jones, 204 Fed. 2d 745 (certiorari denied 346 U. S. 854). In that case the court said at page 754:

"Necessary implication refers to a logical necessity; it means that no other interpretation is permitted by the words of the Acts construed; and so has been defined as an implication which results from so strong a probability of intention than an intention contrary to that imputed cannot be supported. 42 C.J.S., page 405 and cases there cited. The term is used where the intention with regard to the subject matter may not be manifested by explicit and direct words, but is gathered by implication or necessary deduction from the circumstances and the general language. Burford v. Huesby, 35 Cal.App. 2d 643, 96 P.2d 380; Goldfein v. Continental Ins. Co., 125 Neb. 112, 249 N.W. 78; 42 C.J.S., page 406. Consequently that which is implied in a statute is as much a part of it as that which is expressed, for a statutory grant of a power carries with it, by implication, everything necessary to carry out the power and make it effectual and complete.* * *

The proviso in Paragraph 5 of Chapter 78, 1969

Illinois Revised Statutes reads as follows:

"Provided, if any person who has been selected as a juror shall not have been drawn, or have served upon a jury during the year for which he was selected, he shall, if qualified, be selected for the next year."

The general rule is that a proviso is intended to modify or qualify what is affirmed in the body of the paragraph or to except something from the Act, but not to enlarge the Act, People ex rel. Roose v. Kaul, 302 Ill. 317.

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Paragraph 5 of Chapter 78 requires that a new list shall be made every two years. Consequently, I am of the opinion that the names which were not drawn from the jury box should be discarded when a new list is made. A new list of 400 should be placed in the box from the new 10% jury list.

Very truly yours,

ATTORNEY GENERAL