

OPINION 27

OFFICIAL OPINION NO. 27

November 12, 1971

Hon. Roger L. Singleton
Indiana State Representative
1409 Master Drive
Decatur, Indiana 46733

Dear Representative Singleton:

This Official Opinion is in response to your request for an answer to the following question:

“As a result of the holding by the Indiana Supreme Court in the case of *State ex rel. Brune v. Vanderburgh Circuit Court*, 265 N.E. 2d 524 (1971), are the jury commissioners in all counties of Indiana now required to use the county master file of voters in lieu of the tax records in selecting names for jury duties with grand and petit juries?”

ANALYSIS

State ex rel. Brune v. Vanderburgh Circuit Court, *supra*, requires that the County Jury Commissioners of Vanderburgh County choose prospective jurors from the voters' registration list of the county in lieu of the tax duplicate list that is required by Burns' 4-7104. The Court stated the following:

“We now, therefore, hold that the order of the Vanderburgh Circuit Court was made in the exercise of judicial discretion under the provisions of §4-7115, *supra*, and the holdings of the Supreme Court of Indiana and the Supreme Court of the United States. For all the foregoing reasons, the order of the Vanderburgh Circuit Court entered as of December 10, 1970, directing the jury commissioners to select the names of persons to be placed in the jury box for the ensuing year of 1971 for the selection of grand and petit jurors was a valid and proper exercise of judicial discretion. That said order was a recognition that §4-7104, *supra*, is no longer adequate for the selection

of names to go in the jury box for the reason that in Vanderburgh County the names selected from the tax duplicates and schedules would not contain a list of persons that would be a representative cross-section of the citizens of Vanderburgh County. Such a method would not be an arbitrary exclusion of householders or spouses of householders; but rather would include a representative cross-section of all segments of the citizenry and thereby assure representation of all classes.”

The aforementioned case held that the order of the Vanderburgh Circuit Court directing the jury commissioners to select the names of grand and petit jurors from a list of legal voters and citizens of the United States contained in the master file of the voters of Vanderburgh County and to make such selection by wards and townships, rather than by the method prescribed by this section. This was a recognition that since the enactment of Burns' 47-3602, which imposed an excise tax on motor vehicles in lieu of *ad valorem* property tax thereby removing owners of motor vehicles from the property tax rolls, the method prescribed by Burns' 4-7104 is no longer adequate for the selection of juries. For names selected from the tax duplicates and schedules alone would not be a representative cross-section of the citizens of Vanderburgh County.

CONCLUSION

It is my official opinion, therefore, that since the Indiana Supreme Court has held that the prior method of jury selection (Burns' 4-7104) is no longer adequate for the purpose for which it was designed, the other counties of Indiana are put on notice of the Supreme Court decision. Vanderburgh County stands in the same position as the other counties, since Burns' 4-7104 is statewide and general, as opposed to specific legislation. All counties must, therefore, abide by the Supreme Court decision until the Indiana Legislature again speaks on the issue.