

1974 WL 27513 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 21, 1974

*1 The Honorable William S. Fairey, Jr.
Orangeburg County Magistrate
Post Office Drawer 369
Orangeburg, SC 29115

Dear Judge Fairey:

You have recently posed the following two questions for answer by this Office.

(1) Under Section 43-116 of the 1962 Code of Laws of South Carolina, can a magistrate's secretary be empowered to prepare and select a jury in a criminal case?

(2) Under the above cited section, is a magistrate required to provide the accused with a list of the eighteen prospective jurors prior to the striking of the jury?

Section 43-116 states, 'the sheriff, constable, or other officer appointed by the magistrate shall write and fold up eighteen ballots, each containing the name of a respectable voter of the vicinity.' (emphasis added.) Your question concerns whether or not a magistrate's secretary would qualify as an 'other officer'. It would seem from a close reading of the statute that a secretary would not be an officer as contemplated by the statute.

Following an enumeration of particular classes 'other' must be read as 'other such like,' and includes only others of like kind and character. Black's Law Dictionary, Other p. 1253.

The statute in question mentions sheriff, constable or other officer. This would limit the selection of the other officer to one of like kind and character to a sheriff or constable. (i.e. deputy sheriff or other law enforcement official.) It is therefore the opinion of this office that a magistrate's secretary is not an officer as contemplated by Section 43-116.

In answer to question number 2 above, I would like to point out that in any criminal trial, the protection of the rights of the accused is of paramount importance to the court. The right to be tried by a jury of ones peers is basic to our system of criminal justice. Along with this right goes the privilege to have a part in the selection of that jury. Although there is no requirement in Section 43-116 that the defendant be provided with a list of the eighteen prospective jurors, it is difficult to perceive of any way that an accused could derive any benefit from the exercise of his jury strikes without having knowledge of who constitutes the venire. I, therefore, recommend to you that the accused and the prosecution be supplied with a list of the eighteen prospective jurors prior to the striking of the jury. To do otherwise would deprive the accused of a chance to make knowing and intelligent decisions regarding the exercise of his rights in jury selections.

I appreciate very much your inquiry and trust that your questions are sufficiently answered. If you have any further questions, please feel free to contract me.

Very truly yours,

Hutson S. Davis, Jr.
Assistant Attorney General

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