

## Chapter 10

### Juries

#### Chapter 10

##### NOTES OF DECISIONS

A former similar statute making it optional with women to act as jurors, did not violate a defendant's constitutional right to a trial by jury, nor was it void as discriminatory against men as a class. *State v. Chase*, (1923) 106 Or 263, 211 P 920.

A former similar statute did not violate the equal privileges and immunities clause of Ore. Const. Art. I, §20. *State v. Putney*, (1924) 110 Or 634, 224 P 279.

#### 10.030

##### NOTES OF DECISIONS

The clause that no person shall be summoned as a juror more than once a year applies only to petit jurors, and the fact that several grand jurors on a panel had served as petit jurors within the past year did not disqualify them, or render the indictment insufficient. *State v. Brown*, (1895) 28 Or 147, 41 P 1042; *United States v. Clark*, (1891) 46 Fed 633.

The decision of the trial court on the qualifications of a grand juror is conclusive. *State v. Carlson*, (1900) 39 Or 19, 62 P 1016.

Incompetence of juror by reason of felony conviction may be waived by failure to inquire on voir dire. *State v. Benson*, (1963) 235 Or 291, 384 P2d 208.

**FURTHER CITATIONS:** *Kie v. United States*, (1886) 27 Fed 357; *United States v. Mitchell*, (1905) 136 Fed 896.

**ATTY. GEN. OPINIONS:** Meaning of "inhabitant," 1920-22, p 426; discretion of jury commissioners in determining qualifications of jurors, 1928-1930, p 547.

#### 10.040

##### NOTES OF DECISIONS

Reasons of public policy and convenience justify the exemption of the persons named. *State v. Chase*, (1923) 106 Or 263, 211 P 920.

A defendant may not complain because particular classes of persons may be excluded as exempt, so long as the jury is composed of qualified citizens impartial between the state and defendant. *Id.*

**FURTHER CITATIONS:** *Hoyt v. Florida*, (1961) 368 US 57, 7 L Ed 2d 118, 82 S Ct 159.

**ATTY. GEN. OPINIONS:** Destruction of jurors' certificates and sign-in sheets, 1960-62, p 401.

#### 10.050

##### NOTES OF DECISIONS

A court is not prohibited from excusing a prospective juror for sufficient reason made known to it before the jury has been sworn, in the absence of the defendant or other

wise. *State v. Savan*, (1934) 148 Or 423, 36 P2d 594, 96 ALR 497.

**FURTHER CITATIONS:** *Hoyt v. Florida*, (1961) 368 US 57, 7 L Ed 2d 118, 82 S Ct 159.

#### 10.060

**CASE CITATIONS:** *Bloch v. Multnomah County*, (1893) 25 Or 169, 35 P 30.

**ATTY. GEN. OPINIONS:** Grand jury fees after dismissal and before resumption of investigation, 1930-32, p 271; jurors' fees in justice court, 1932-34, p 614, 1936-38, p 269, 1942-44, p 389; jurors' fees upon change of venue, 1944-46, p 5; return of jury fees, 1962-64, p 29.

#### 10.065

##### NOTES OF DECISIONS

Under former similar statute, the claim for mileage had to be for the number of miles actually traveled. *Howe v. Douglas County*, (1869) 3 Or 488.

**FURTHER CITATIONS:** *Crawford v. Abraham*, (1866) 2 Or 163; *State v. Chadwick*, (1880) 10 Or 539.

**ATTY. GEN. OPINIONS:** Destruction of jurors' certificates and sign-in sheets, 1960-62, p 401.

#### 10.080

**CASE CITATIONS:** *State v. Reid* (dissenting opinion), (1956) 207 Or 617, 298 P2d 990.

#### 10.110

##### NOTES OF DECISIONS

The determination by the court of the qualifications of a grand juror is conclusive and no appeal may be taken therefore. *State v. Carlson*, (1900) 39 Or 19, 62 P 1016.

The duty of making a jury list is to be classed in that portion of the jurisdiction of the county court exercised as a board of county commissioners, named in Ore. Const. Art. VII (O), §12, and not as a judicial function to be performed by the county court considered solely as a judicial tribunal. *State v. Holman*, (1914) 68 Or 546, 137 P 771.

Failure of county officials to comply with statutes in selecting jury panels does not amount to denial of equal protection of the laws. *Anderson v. Gladden*, (1963) 234 Or 614, 383 P2d 986, cert. denied, 375 US 975, 84 S Ct 485, 11 L Ed 2d 420.

Systematic exclusion from the jury of members of a defendant's race, if proven, would be a denial of equal protection of the laws. *Id.*

**FURTHER CITATIONS:** *United States v. Mitchell*, (1905) 136 Fed 896; *Anderson v. Gladden*, (1967) 303 F Supp 1134.

ATTY. GEN. OPINIONS: Ownership of property as requirement for juror, 1920-22, p 426; selecting women on jury list, 1920-22, p 464; selecting jury for criminal case in county court, 1922-24, p 617; selecting names for jury list, 1928-30, p 547; destruction of jurors' certificates and sign-in sheets, 1960-62, p 401.

LAW REVIEW CITATIONS: 37 OLR 29.

#### 10.120

##### NOTES OF DECISIONS

The duty of making a jury list is to be classed in that portion of the jurisdiction of the county court exercised as a board of county commissioners, named in Ore. Const. Art. VII (O), §12, and not as a judicial function to be performed by the county court considered solely as a judicial tribunal. *State v. Holman*, (1914) 68 Or 546, 137 P 771.

ATTY. GEN. OPINIONS: Selecting women for jury list, 1920-22, p 464; selecting names for jury list, 1928-30, p 547.

#### 10.130

CASE CITATIONS: *United States v. Mitchell*, (1905) 136 Fed 896.

ATTY. GEN. OPINIONS: Method of selecting names for jury list, 1928-30, p 547; destruction of jurors' certificates and sign-in sheets, 1960-62, p 401.

#### 10.135

##### NOTES OF DECISIONS

Under former similar statute, in the absence of any charge of fraud, where jury list was selected by method laid down in statute, mere fact that an undue number of jurors were from one portion of county was not a ground for objection to admission of evidence at a trial conducted with a jury made up from such jury list. *State v. Riley*, (1934) 147 Or 89, 30 P2d 1041.

#### 10.210

##### NOTES OF DECISIONS

When the court discharges the regular panel of jurors for the term, there can be no more competent jurors for that term, as the only competent jurors are those selected as prescribed by the statute, subject to the exceptions for supplying deficiencies. *Mosseau v. Veeder*, (1864) 2 Or 113.

FURTHER CITATIONS: *O'Kelly v. Territory of Oregon*, (1853) 1 Or 51.

ATTY. GEN. OPINIONS: Selecting a jury for criminal case in county court, 1922-24, p 617.

#### 10.220

CASE CITATIONS: *State v. Nagel*, (1949) 185 Or 486, 202 P2d 640.

#### 10.230

CASE CITATIONS: *State v. Carlson*, (1900) 39 Or 19, 62 P 1016.

#### 10.240

##### NOTES OF DECISIONS

A litigant cannot object to jurors summoned in the manner prescribed by law and accepted by the court as legal

jurors on the ground that the law is unconstitutional, for a jury, though selected in pursuance of a void law, is selected under color of law and is a de facto jury, and where the particular jurors so drawn are competent and qualified, a challenge cannot be interposed. *State v. Ju Nun*, (1909) 53 Or 1, 97 P 96, 98 P 513.

FURTHER CITATIONS: *State v. Riley*, (1934) 147 Or 89, 30 P2d 1041; *State v. Nagel*, (1949) 185 Or 486, 202 P2d 640.

#### 10.260

##### NOTES OF DECISIONS

In the absence of any showing of partiality on the part of the sheriff, the fact that jurors were not summoned strictly in accordance with statute was not a ground for challenge. *State v. Caseday*, (1911) 58 Or 429, 115 P 287.

#### 10.300

##### NOTES OF DECISIONS

Having discharged the regular panel of jurors for the term, the circuit court has no authority to summon a different jury, for the trial of any cause at that term, against the will of either party. *Mosseau v. Veeder*, (1864) 2 Or 113.

The power to fill up the panel should be confined, it seems, to the making of an order to fill up the panel to the number of jurors provided for in the code. *State v. Dale*, (1880) 8 Or 229.

The jurors added are as much a part of the panel as those regularly drawn from the jury list, and the irregularity in the same is not subject of challenge. *Id.*

Determination of an objection to allowing the sheriff to summon talesmen for a jury, on the ground that he is interested and prejudiced, is discretionary. *State v. Savage*, (1899) 36 Or 191, 199, 60 P 610, 61 P 1128.

Where several jurors are required for a term, names of jurors that were drawn for one jury but then excused should be restored to the jury box so that their names may be used in drawing subsequent juries or in completing a jury already commenced. *State v. Houghton*, (1904) 45 Or 110, 75 P 887.

FURTHER CITATIONS: *State v. Nagel*, (1949) 185 Or 486, 202 P2d 640.

#### 10.310

##### NOTES OF DECISIONS

Where several juries are required for a term, names of jurors that were drawn for one jury but then excused should be restored to jury box so that their names may be used in drawing subsequent juries or in completing a jury already commenced. *State v. Houghton*, (1904) 45 Or 110, 75 P 887.

#### 10.320

##### NOTES OF DECISIONS

Where several juries are required for a term, names of jurors that were drawn for one jury but then excused should be restored to jury box so that their names may be used in drawing subsequent juries or in completing a jury already commenced. *State v. Houghton*, (1904) 45 Or 110, 75 P 887.

#### 10.330

ATTY. GEN. OPINIONS: Destruction of jurors' certificates and sign-in sheets, 1960-62, p 401.

10.340

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ATTY. GEN. OPINIONS: Destruction of jurors' certificates and sign-in sheets, 1960-62, p 401.

10.350

CASE CITATIONS: State v. Gee, (1895) 28 Or 100, 42 P 7.