

Opinion No. 69-98

August 19, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Vince D'Angelo, Assistant Attorney General

TO: Honorable H. Leslie Williams, Chief Deputy District Attorney, Second Judicial District, County Court House, Albuquerque, New Mexico

QUESTIONS

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Do Chapter 222 and Chapter 276, Laws of 1969 require the dissolution of grand juries selected pursuant to the provisions of Section 19-1-18, N.M.S.A., 1953 Comp. (repealed July 1, 1969)?

CONCLUSION

Yes.

OPINION

{*156} ANALYSIS

The statutes pertinent to this discussion are Chapter 276, Laws of 1969, Sections 1 and 3 and Chapter 222, Laws of 1969, Sections 3, 17 and 18. They provide:

Chapter 276. § 1. A new Section 41-5-1 NMSA 1953 is enacted to read:

"41-5-1. Grand Jury Panel -- Calling -- Qualifying. -- The district judge may convene a grand jury at any time, without regard to court terms. The grand jury shall serve for a period of no longer than six months. The district judge shall summon and qualify as a panel for grand jury service such number of jurors as he deems necessary. Each grand jury shall be composed of twelve jurors. The district judge may discharge or excuse members of the grand jury and substitute alternate grand jurors as necessary. The names of jurors summoned for grand jury service shall be drawn from the master jury wheel of the district court for the county."

Chapter 276. § 3. A new Section 41-5-3 NMSA 1953 is enacted to read:

"41-5-3. Challenge to Grand Jury. -- Any person held to answer for an offense by grand jury indictment, upon arraignment to the charge therein, by motion to quash the indictment stating with particularity the ground therefor, may challenge the validity of the

grand jury. A failure to file such motion is a waiver of the challenge. Grounds that may be presented by such motion are limited to the following:

A. the grand jury was not selected in accordance with law;"

Chapter 222, § 3, Laws 1969, reads:

"19-1-3. Poll Books -- Source for Juror Selection. -- Each county clerk shall preserve and make available to the district courts, until no longer needed for this purpose, the poll books from the general election last held in the county. The clerk of the district court for each county within ninety days following the general election, shall select from the names of voters enrolled on the poll books of every voting division in the country, **the persons to serve as potential jurors for grand {157} jury and petit jury service during the following two years.** The method of selection shall be at random and in a manner to provide that no discrimination is exercised except for the elimination of persons who are not eligible for jury service. The selection will be made by the jury commission with the assistance of the clerk 'when a jury commission is appointed by the district judge. The district judge shall designate the number of potential jurors to be selected. The number shall be at least equal to five percent of the number of voters' names contained in the poll books of the last general election but no less than one hundred fifty." (Emphasis added.)

While Chapter 276, Laws of 1969 does not specifically call for the dissolution of grand juries selected prior to the effective date of the new law, that appears to be its effect. In **State ex rel. Maloney v. Neal**, No. 8887, Supreme Court (August 4, 1969) the Supreme Court of New Mexico held that the new jury selection law should go into effect immediately insofar as it is possible to comply with its provisions. **Neal** dealt with the selection of petit jurors but it necessarily includes grand jurors as well since prior to July 1, 1969, both petit and grand juries were selected pursuant to the provisions of Section 19-1-18, N.M.S.A., 1953 Compilation. This statute was specifically repealed by Section 17, Chapter 222, Laws of 1969. The absence of a savings clause in either Chapter 222 or Chapter 276, Laws of 1969 indicates the legislature did not intend the repealed law to remain effective after July 1, 1969 and did intend that the provisions of both Chapter 222 and Chapter 276, Laws of 1969 be compiled with insofar as possible, after that date.