Opinion No. 12-882

April 22, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Hon. W. H. H. Llewellyn, Chairman of House Committee on Judiciary, Santa Fe, New Mexico.

GRAND JURY.

When Constitution refers to a presentment or indictment by Grand Jury, it means a Grand Jury as known to the common law.

OPINION

*{*25}* I have made a sufficient examination of authorities to convince me that I was correct in my position that when the Constitution refers to a presentment or indictment by a grand jury it means a grand jury as known to the common law, and that it is not within the power of the Legislature to make grand juries of greater or less number than was permissible at the common law. In the case of Commonwealth v. Wood, 2 Cushing 149, it is clearly and distinctly announced that at common law the grand jury could not be less than 13 in number nor more than 23, and I find the same statement in other authorities.

*{*26}* The precise point under consideration is discussed in a note to State v. Belvel, 27 L. R. A. 846, where a number of cases are cited to show that under such constitutional provisions as ours legislative action providing for a different grand jury, or for one in which less than 12 can find an indictment, is invalid. The cases cited are two from Florida, one from North Carolina, one from Nevada and one from Wisconsin, followed by the statement that no decisions have been found directly in conflict with those cited. In many states it seems that by constitutional provision smaller grand juries are authorized, as in Iowa the constitution provides for a grand jury of from five to fifteen; in Colorado the constitution limits the grand jury to twelve; in Kentucky the constitution provides that the grand jury shall be twelve; in Montana the constitution reduced the grand jury from 16 to 7, and in Texas the constitution provides for a grand jury of 12.