

SUBCOMMITTEE OF
SENATE JUDICIARY COMMITTEE
FEBRUARY 9, 1970
ROOM 523
CONSIDERATION OF SB. No. 483

The subcommittee (considering Senate Bill No. 483) of the Senate Judiciary Committee met February 9, 1970, at nine o'clock A.M. in Room 523. Senator Ball called the meeting to order. Members present were Vice-chairman Tillotson, Senators Healy, Herd & Storey.

Senator Ball opened the meeting by telling the committee that the article on eavesdropping was going to be rewritten because of some fears voiced by the county attorneys on some items. Professor Paul Wilson and Senator Tillotson were designated to rewrite this.

The chairman also stated that the article on search and seizure would also be rewritten to comply with the present language in the law.

Senator Ball read the paragraph written by Professor Paul Wilson rejecting the idea of making a clerk of the court a magistrate.

Some discussion followed as to changing the word "view" to "presence" on page 8 in line 4.

Norman Furss from the Revisor's office was called in to explain the numbering of the sections.

Richard J. Foth was present in an advisory capacity.

Keith Sanborn of Wichita (county attorney) was present to present his suggestions for changes in the code. He had considerable literature expressing his views, copies of which are attached hereto and made a part hereof.

Specific sections taken up and discussed were as follows:
22-2502 and 22-2503 (1) to be rewritten; on page 17 22-2607;
on page 33 22-2802 (4) and (5); on page 35 22-2806, line 3;

page 38, line 2, suggested to insert "in the case of misdemeanor and" following the word "or" by Keith Sanborn and this amendment was not okayed: It was decided that the insertion suggested for page 39, line 11 had been taken care of in Sec. 22-2710. Richard then explained in detail the definition of a fugitive from justice. Keith Sanborn also expressed his views on the subject. Senator Tillotson moved that on page 9 in line 15 the words "or personal appearance" be inserted after the word "arrest".

Richard Foth brought out some needed changes, to-wit: On page 46, line 3, the word "Council" should be "Counsel"; on page 58 the section which should have been 22-3212 is numbered 22-3312.


Senator Ball stated he was in complete agreement with the county attorneys' position on appeals. 22-3603 was discussed and the county attorneys' suggestions were read.

Keith Sanborn talked at length on Grand Juries which is covered completely in the literature presented to the committee.

The meeting adjourned to meet February 10, 1970 at 11 A.M. in Room 523 with the full committee in attendance.


Martha P. Welch, Recording Sec.

MINUTES APPROVED:


Steadman Ball, Chairman

February 10, 1970

EXCEPT AS OTHERWISE NOTED, THE INDIVIDUAL REMARKS RECORDED HEREIN HAVE NOT BEEN TRANSCRIBED VERBATIM AND THIS RECORD HAS NOT BEEN APPROVED BY THE COMMITTEE OR BY THE INDIVIDUALS MAKING SUCH REMARKS.

F O R E W A R D

This manual has been prepared for the use of the Grand Jurors of Sedgwick County, Kansas. It is hoped that it will assist you in carrying out your duties since Grand Juries have not been called in our county in recent years.

We have sought and obtained the advice and counsel of Prosecuting Attorneys and others in other states who regularly work with Grand Juries. The Kansas Law pertaining to this subject was studied. This manual was then compiled from the study of the Kansas Law and from the advice and information obtained from persons of experience in this field. Thus the suggestions to the Foreman and the individual Grand Jurors contained herein are based upon the experience of persons who have served as Foreman and Grand Jurors as well as Prosecuting Attorneys and Judges who have worked with Grand Juries.

Because it is based upon actual experience, we hope this manual will be a practical working hand book for study and reference. Its only purpose is to aid you in meeting the problems which arise and to carry on your work in an orderly fashion.

The County Attorney and his staff as legal advisors stand ready to assist you in any matter you desire to the end that we both may discharge our mutual responsibilities and duties to the citizens of Sedgwick County, Kansas, in the enforcement of the laws of the State of Kansas and the proper administration of justice.

KEITH SANBORN,
County Attorney.

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I. ORIGIN OF GRAND JURY

The grand jury had its origin more than seven centuries ago, in England, from which, in large part, this country inherited its legal system. It was recognized in Magna Carta granted by King John of England in 1215 A.D., on the demand of the people. The power of the grand jury to protect citizens from despotic abuse of power has been repeatedly exerted not only in England, but the United States, even before the Declaration of Independence. It was designed as a means not only of bringing to trial persons accused of public offenses upon just grounds, but also for protecting a citizen against unfounded accusations.

II. SELECTION AND TERM OF GRAND JURORS

A grand jury shall be summoned when a petition praying for said grand jury shall be properly presented by the required number of taxpayers of the county.

The statute specifically provides that the grand jurors shall serve for a term of the District Court. Terms of the Court are January, April and September term.

K.S.A. 62-1901

K.S.A. 62-1902

In re Frye, 173 K.392

III. QUORUM

A full panel of the grand jury consists of fifteen persons. It takes twelve affirmative votes to return an indictment. No indictment can be found without the concurrence of at least twelve grand jurors.

K.S.A. 62-904
K.S.A. 62-927
State v. Copp, 34 K.522

IV. SELECTION OF GRAND JURIES

A grand jury is drawn in the same manner as a petit jury for the District Court.

K.S.A. 62-902

V. OATH OF GRAND JURORS

The jurors before entering upon their duties take an oath swearing or affirming that they will perform their duties diligently in all matters coming to their knowledge; that they will indict no person for malice, hatred or ill will; nor leave any unrepresented through fear, favor or affection, or for reward or the promise or hope thereof.

K.S.A. 62-905
K.S.A. 62-906

VI. SUGGESTED PROCEDURE

A. Suggested Procedure for First Meeting

In all probability, many of you will not be personally acquainted, nor familiar with the background of your members, so at the first meeting, it is advisable for the Foreman to introduce himself to the other jurors, state his occupation, business, professional experience, and his specific aptitudes, if any, and then call upon each of the other grand jurors to do likewise. Members should not be too modest or retiring in their remarks, but should remember that the purpose of this is to enable the jurors to become better acquainted, and to assist each of you, and particularly your Foreman, in the selection of those best qualified to fill the various offices and committees that are essential in the discharge of your duties. It will be well if each member will also state whether or not any near relative or business associates hold or have held any public office.

Experience has indicated that committee appointments and permanent organizations should be avoided at the first meeting.

It will also help if each juror is requested to designate several committees on which he feels he is best qualified to serve, noting the committees in order of his preference or qualifications. These lists may be handed to the Foreman for study in conjunction with the information already obtained.

Unless immediate action of the grand jury on some pressing matter is necessary, it is suggested that at least one week elapse before the second meeting, so that all of the jurors can (1) review the information contained in the judges charge and study this separate manual, and (2) be deliberate about the permanent organization of the grand jury.

B. Order of Business

The following is a suggested order of procedure for those meetings at which the grand jury is not considering a special investigation:

1. Roll call by the Secretary.
2. Reading of Minutes.
3. Communications.
4. Business presented by the Court or County Attorney.
5. Business presented by Foreman.
6. Report of Committees.
7. Miscellaneous business.
8. Adjournment.

C. Suggested Rules of Order

1. The Foreman shall preserve order; may speak to points

of order in response to members, and shall decide all questions of order, subject to appeal, as is usual.

2. When any member is about to speak, he shall address the Foreman, and confine himself strictly to the question under discussion.

3. When a motion is made or a resolution is offered, it shall be handed, if in writing, to the Secretary, and by him read before it is discussed. Every resolution shall be reduced to writing, if any member desires it.

4. When a question is under debate, no motion or proposal shall be received but to adjourn, to amend, to lay on the table, for the previous question, to postpone indefinitely, to postpone to a given time, or to commit to a committee. The several motions last mentioned shall take precedence in the order as here arranged. A motion to adjourn shall always be in order, except when a member is speaking, and shall be put without debate.

5. If, at any meeting, a member doubts the decision of a vote, he may call a roll call.

6. No member who did not vote with the majority on any question shall move the reconsideration of a vote. Reconsideration of a question can only be had at the first subsequent meeting,

notice having been given at the previous one.

7. All complaints, except those lodged by the County Attorney, presented to this grand jury must be in writing, and shall not be heard upon the day presented, or prior to referral to the Committee on Criminal Complaints, except by consent of two-thirds of the members present. The grand jury may determine in what order all complaints will be considered.

8. No matter shall be considered by this grand jury without having been referred to a committee for study and report, except by consent of two-thirds of the members present.

9. No grand juror shall be allowed to speak on the same subject more than once, except by consent of the Foreman, and then only when all of the members who wish to speak have done so. The Foreman may then allow a juror, if he wishes, to speak a second time, and this privilege is then extended to all members.

10. The foregoing rules may be suspended at any meeting of the grand jury by a vote of two-thirds of the members present.

11. If, at any meeting, questions should arise that are not treated upon above, they shall be decided in accordance with "Robert's Rules of Order."

NOTE: The foregoing Rules of Order are suggested by the County Attorney to expedite your work, and you may or may not adopt same, as you see fit. However, no rule should be adopted or enforced which will keep the proceedings of the grand jury in such a rigid form that matters cannot be informally discussed. There is no reason why meetings cannot be very informal, so long as the business is transacted with efficiency and dispatch.

VII. APPOINTMENT AND DUTIES OF FOREMAN

As already noted, the Court appoints the Foreman of the grand jury. If the selected foreman shall be discharged or excused before the grand jury shall be terminated, the judge shall appoint a Foreman in his place. The Foreman has the power to administer an oath, declaration, or affirmation in the manner prescribed by law, to any witness who shall appear before the grand jury.

He shall, when an indictment is found, endorse thereon "a true bill" or when the grand jury does not vote an indictment, "not a true bill." Indictments found by the grand jury are presented by the Foreman in the presence of the jury, to the Court.

The following are the usual routine duties of the Foreman:

1. Call meetings of the grand jury when needed, and preside at same.

2. Prepare the agenda of such matters as are scheduled to come before the grand jury, so that business may be transacted in the most expeditious manner.

3. Appoint all standing and such special committees as may be ordered by the grand jury.

4. Make changes in committee assignments when deemed advisable, and when approved by the committee chairman.

5. Sign all communications of the grand jury.

6. Sign the report of the grand jury on the condition of the jail.

7. Sign all indictments, and present same to the Court.

8. Administer oaths.

The Foreman will doubtless recognize that his most important responsibility lies in seeing that each of the committees functions effectively. To this end, he should be in constant consultation with the various committee chairmen and should require frequent progress reports as to the work being handled by each committee.

K.S.A. 62-910

K.S.A. 62-927

K.S.A. 62-928

K.S.A. 62-929

VIII. MINUTES OF PROCEEDING OF GRAND JURY

The law provides that the grand jury may appoint one of their member to be a clerk thereof to preserve minutes of their proceedings and the evidence given before them, which minutes shall be given to the attorney prosecuting in the county.

The following are the usual routine duties of the Clerk:

1. Send out, or cause to be sent out, notices of all meetings of the grand jury.
2. Call and record the roll of the grand jurors present at each meeting. Where meetings are continued from day to day, notation should be made of those absent, and the absentees kept informed of the recurring meeting of the grand jury. An accurate record of the members who attend meetings will be necessary in order for them to receive their fees and mileage.
3. Keep an accurate record of all proceedings at every grand jury meeting in the form of minutes. These minutes should show the following:
 - (a) Exact hour and minute of convening.
 - (b) Jurors absent at the time of convening.
 - (c) Person other than jurors who may be in the jury room at the time of convening; for example, the County

Attorney, court reporter, etc.

NOTE: It is improper for anyone to enter the grand jury room during a meeting without an invitation, or to remain during deliberations or voting.

- (d) Exact hour and minute absent jurors may appear.
- (e) Exact hour and minute any jurors or other persons leave the meeting, if excused by the Foreman.

NOTE: It is important that the minutes show that at least a quorum of twelve jurors is present at all times during any hearing or investigation, and the clerk should advise the Foreman if at any time the number of jurors present drops below this number.

- (f) Witnesses called, together with notations as to the exact hour and minute when called and when excused.
- (g) Record of whether or not the witnesses called are sworn and advised of their rights as witnesses.

NOTE: The Clerk should watch this procedure carefully, and advise the Foreman if any part of the required procedure has been overlooked.

- (h) Record all of the motions made, seconded and voted upon, and the jurors' action thereon.

NOTE: It is probably unwise to keep a record in the grand jury file of the votes of individual jurors on matters involving indictments or criminal actions. The grand jury should make its own rules on this matter and determine for itself its desires. Some grand juries have adopted the rule that no unanimous vote on any matter should be recorded in the minutes of any meeting, thereby permitting absolute secrecy as to the votes of each and every juror at every meeting. When indictments are to be voted upon, the names of jurors moving and seconding such motion may be omitted from the minutes.

- (i) Record all reports submitted by various committees and the grand jury's action thereon.
- (j) Keep a roster of attendance at all grand jury meetings, separate and apart from the regular roll call, to enable the Clerk properly to note and record the pay to which each grand juror is entitled.
- (k) Record all of the grand jury's expenditures.

It is suggested that the minutes of each meeting be prepared in duplicate -- one to be retained by the Clerk and the other by the Foreman. This procedure will prove an important aid to the Foreman in preparing the agenda for subsequent meetings. After the grand jury is discharged, it is well that all minutes be destroyed.

The statutes specifically provide that the grand jury may appoint a stenographer to transcribe evidence. The stenographer shall receive \$5.00 per day for his services.

K.S.A. 62-911

K.S.A. 62-912

K.S.A. 62-913

IX. DUTIES OF THE COUNTY ATTORNEY

The County Attorney has the duty under the law to carry on prosecutions on behalf of the State of Kansas. Whenever required by any grand jury it shall be the duty of the County Attorney to attend them for the purpose of examining witnesses in their presence or giving them advice upon any legal matter. The County Attorney or a member of his staff is present when evidence is being heard. In situations in which the County Attorney is interested his office will arrange to have the necessary witnesses present. However, if it is necessary, the

Foreman or an individual juror may request that additional witnesses be called or persons, who have already testified, be recalled.

The County Attorney has the power to cause the Clerk of the Court in which such jury is impaneled to issue subpoenas and other process to bring witnesses to testify before the grand jury. Whenever required any member of the grand jury may cause subpoenas to be issued.

K.S.A. 62-914
K.S.A. 62-916

X. RIGHTS AND PRIVILEGES OF THE COUNTY ATTORNEY

The County Attorney shall be allowed at all times to appear before the grand jury on his request, for the purpose of giving information relative to any matter cognizable by them, and may be permitted to interrogate witnesses before them when they or he shall deem it necessary. The County Attorney therefore has the right to go before the grand jury whenever he deems proper, except neither he nor anyone else may be present during the deliberations of the grand jury.

K.S.A. 62-915

XI. WHO MAY ADVISE GRAND JURORS

The grand jury shall look to the County Attorney for

information, advice and guidance. This would include not only the County Attorney, but also any deputy member of his staff as appointed by the County Attorney. Such attorney shall attend, advise and assist the grand jury and examine and preserve the testimony of witnesses.

K.S.A. 62-914

XII. Admonition to be Given by Foreman
Before Considering Indictment

Before consideration of an indictment against any person, the Foreman should give the following admonition to the members of the grand jury, and should direct any member, whose state of mind is such as will prevent him from acting impartially and without prejudice, to retire:

"We are about to consider the matter of ,
and the charge of , against ,
in connection therewith. It is my duty to state to you
that if any member of this grand jury present has a state
of mind in reference to the above-mentioned matter, or
to any party interested therein, which will prevent him
from acting impartially and without prejudice to the
substantial rights of any party charged, he is directed
to retire from the jury room at this time."

XIII. INDICTMENT

An indictment is an accusation in writing presented by the grand jury to a competent court. In Kansas the indictment can be returned in both felony and misdemeanor cases. A felony is described by statute as a public offense punishable by death or confinement and hard labor in the penitentiary. All other public offenses are misdemeanors.

It should be remembered that although an indictment is only a formal charge of a crime and therefore does not require the degree of proof required for a conviction at trial, still an indictment should not be returned unless the grand jury finds from legal evidence that a crime has been committed and there is probably cause to believe that the defendant committed the crime.

K.S.A. 62-103

K.S.A. 62-104

XIV. SUFFICIENCY OF EVIDENCE REQUIRED FOR INDICTMENT

The grand jury is authorized by law to find and present bills of indictment for either felonies or misdemeanors committed against the laws of the State. Offenses for which the grand jury may inquire must be committed or triable within this county. A grand jury finds an indictment on testimony of witnesses appearing and testifying before it under oath. An indictment

cannot be quashed because it rest in whole or in part on incompetent evidence given before the grand jury. The grand jury itself is the judge of the sufficiency of the evidence required to indict and as to whether the testimony which they hear is competent. The indictment should be found upon creditable evidence that there is probable cause for an accusation against the person accused.

K.S.A. 62-905

~~XX~~. WITNESSES BEFORE A GRAND JURY

The province of a grand jury ordinarily is to hear the State's case and from that consider whether a true bill should be returned and the defendant have a public trial on the charges against him. It may investigate all public offenses against the laws of this State cognizable by the court, committed or triable in this county, of which it has or can obtain legal evidence. A prospective defendant has no right to have evidence exonerating him go before the grand jury or to introduce witnesses in his behalf, thereby converting the grand jury into a traverse or jury trial. An investigation by a grand jury is secret and exparte, and there is ^{no} Constitutional right of an accused person to a hearing by the prosecuting officer or the grand jury before an indictment is found.

Because of the secrecy of the proceedings no other witnesses should be allowed in the grand jury room while another witness is being examined.

A potential defendant should be called before a grand jury to testify concerning his own misconduct in exceptional cases and then only after having signed an immunity waiver or orally waiving his immunity at the opening of his testimony before the grand jury.

Every witness called by the grand jury to testify in connection with any matter involving the question of criminal indictment or an investigation of a nature serious enough to require that the testimony be recorded, should be required to take the following oath, to be administered by the Foreman, before the witness is permitted to testify:

"You do solemnly swear (or affirm) that the testimony that you are about to give upon the investigation now pending before this grand jury shall be the truth, the whole truth, and nothing but the truth, so help you, God."

In the event it is likely or possible that any witness may become a defendant by reason of any charges being considered, the Foreman must make the following statement to such

witness before such witness is sworn:

"You have a right to be sworn and make any statement on your own behalf that you may desire. You are informed, however, that if you are sworn and make any statement, such statement, together with any questions that may be asked of you by the members of the grand jury or the County Attorney, will be taken down and become a matter of record, and in the event an indictment is filed against you on this charge, that record may be used either for or against you at the time of your trial. You are not obliged, however, to make any statement whatever, unless you desire to do so. Any statement that you make must be completely voluntary on your part, and with this admonition in mind. Now, after having been informed as to your rights in the premises, do you desire to be sworn and make any statement?"

After a witness has finished his testimony, but before he is excused, he should be admonished by the Foreman as follows:

"You are admonished not to discuss or impart at any time, outside of this jury room, the questions that

have been asked of you in regard to this matter, or your answers, until authorized by this grand jury or the Court to discuss or impart such matters. You will understand that a violation of these instructions on your part may be the basis for a charge against you of contempt of court. This admonition, of course, does not preclude you from discussing your legal rights with any legally employed attorney, should you feel that your own personal rights are in any way in jeopardy."

If any witness is called before the grand jury more than once in connection with the same matter, the Foreman need not administer a new oath to him, but need only advise him that he is still under his former oath. This latter rule will not apply in connection with any other matters for which the same witness may be called before the grand jury, even though both matters may be heard at the same session of the grand jury. Every witness should be sworn in connection with each separate matter for which the witness is called to testify.

Witnesses coming before the grand jury usually do so for the first time. Therefore, to put each witness at his ease, (particularly where there is no possibility of criminal action

against him), the County Attorney, if present, or the Foreman, should make such statement as will put the witness at his ease.

When an investigation may end in a criminal indictment against the witness himself, he should be advised of his rights under the law, and that he cannot be compelled to answer any question the answer to which might tend to incriminate him.

No statement should be made to a witness that might be construed as granting immunity for any action he may have taken and concerning which he has testified. Under the law, the grand jury does not have this power. The power to grant immunity to any witness who might later appear as a witness for the People against an individual is vested in others than the members of the grand jury.

All sessions of the grand jury, but particularly those during an investigation, should be conducted with as much dignity and decorum as is found in a trial court, and the Foreman should see to it that all members of the jury observe such rules as the following:

(a) Under no circumstances should any member be permitted to engage in any argument or altercation with any witness who appears before the jury.

(b) The interrogation of witnesses should be limited

to bringing out material facts relative to the very subject of the investigation.

(c) During a general hearing, all questions asked of any witness, and the answers thereto, should be recorded. The Foreman, however, has the same right to order irrelevant and improper questions and answers stricken from the record as does a Judge in a trial court, but any juror has a right to question the decision of the Foreman and call for a vote of the jury on the relevance and propriety of the questions and answers. Such question or answer should appear in the records for the trial court to determine.

Every grand juror is of course, entitled to ask questions of a witness, but it has been found through experience that this tends to produce a disjointed, illogical and confused record which makes difficult a logical presentation of the evidence before a trial jury after an indictment has been returned.

Furthermore, if the record shows that individual jurors have interrogated the witness, this may be used later to show that the grand jury conducted an inquisition, persecuted the witness or defendant, and asserted undue influence upon him.

To insure a thorough and logical interrogation of witnesses, the following procedure is suggested:

1. Initially, only the County Attorney or his deputy who is in attendance should examine the witness. Such examination should be entirely complete before any questions are propounded by any juror. If this method is followed, the train of thought of the examiner will not be broken, and in many cases the questions which have come to the minds of the jurors will be covered by the examiner before he completes his examination.

2. When a juror thinks it desirable to ask a particular question of the witness, instead of then interrupting to ask the question, he should write the same on a slip of paper and pass it on to the Foreman. This eliminates interruptions and prevents disjointed testimony. Everything said while the witness is in the grand jury room is being taken down by the reporter, and will later appear exactly as spoken.

3. After the County Attorney or his deputy finishes questioning the witness, the Foreman should then ask such questions as he may consider necessary, including questions received from other members of the jury. The Foreman may, and in many instances probably should, permit the grand jurors to ask their own questions if these questions appear to be proper and relevant.

4. "Off the record" questions or discussions between jurors in the presence of the witness, or with the witness, should be entirely eliminated. Where such discussions are held, this appears on the transcript as a notation that "off the record" discussion took place. This notation provides material for argument for the lawyers at the time of the trial. Furthermore, such "off the record" discussions are not proper evidence, may not be used upon the trial of the case, and frequently disclose to the witness present the frame of mind of the grand jury and the purpose of their entire inquiry.

When a juror feels that an "off the record" discussion is desirable, he should state this fact in writing to the Foreman; then the Foreman, at the conclusion of the testimony of the witness, can ask the witness to leave the grand jury room, but remain upon call in the immediate vicinity.

The foregoing suggested procedure is made with a view to creating a sound record which will assist in securing convictions upon indictments that were properly returned, and which will not provide ammunition for undue discussion and unnecessary tactical moves in the trial court.

XVI. UNAUTHORIZED PERSONS BEFORE GRAND JURIES

No one but an authorized person is permitted in the grand jury room while it is conducting its business. The presence of an unauthorized person before a grand jury is a violation of the rule of secrecy surrounding the action of the grand jury.

The persons authorized to be in the grand jury room while it is conducting business are the County Attorney or his authorized deputy, the Attorney General or one of his deputies, when properly appearing by order of the Governor, the official stenographer of the grand jury, the witness and the grand jurors themselves. But none of the aforementioned persons and officers except the grand jurors themselves are permitted in the grand jury room when the members of the jury express their opinions or give their votes on any matter before them.

K.S.A. 62-915

XVII. PRIVILEGE AGAINST SELF-INCRIMINATION

Every person is protected by his constitutional privilege against self-incrimination. No person is compelled in any criminal case to be a witness against himself. This right should be carefully explained to all witnesses against whom an

indictment may be returned. This rule applies not only to testimony before the grand jury, but in all criminal proceedings. Under certain circumstances a witness may refuse to testify at all or may refuse to answer any particular question if he claims and it appears that to do so would incriminate him. When in doubt as to whether self-incrimination would result, the County Attorney's advice should be requested.

State v. Campbell, 73 K.688

XVIII WAIVER OF IMMUNITY BY POTENTIAL DEFENDANT

A witness is not bound to answer a question which would tend to expose him to prosecution for a crime. However, the right of a witness to refuse to give self-incriminating evidence is a personal privilege which he may waive. Therefore, any witness before the grand jury who is a potential defendant should be afforded an opportunity to sign an immunity waiver in advance of any testimony or asked orally to waive immunity at the beginning of his testimony. By this waiver the witness surrenders his claim, privilege or right to later raise the question of self-incrimination. To fail to get such an immunity would probably result in quashing of an indictment against such witness. This is true at least if he could reasonably have been suspected of a crime at the time he

testified or was under investigation.

State v. Campbell 73 K.688

XIX. Presenting the Indictment

When an indictment or accusation has been voted and found by the grand jury, it must be presented by the Foreman to the Court. Following is the recommended procedure:

1. Either a representative of the grand jury or the County Attorney should arrange with the Judge presiding over the grand jury's activities, or with the Clerk of his Court, for a definite time at which to present the indictment.

2. At the time fixed, the Clerk of the Court, on instruction of the Judge, should call the roll of the grand jury, noting those present and those absent. (At least twelve grand jurors who heard all of the testimony taken must be present when the indictment is presented.) The roll call may be waived at the discretion of the Judge upon a statement by the Foreman that all members of the grand jury are present, or that only certain members are absent. (This procedure is suggested only when time is short, and even then the Clerk should verify the statement of the Foreman.)

3. The Foreman should then approach the Bench and address the Court somewhat as follows:

"May it please the Court, the grand jury of Sedgwick County, in its deliberations, has returned an indictment, and on behalf of the grand jury I herewith present a True Bill."

Note that no public statement should be made as to the name of the defendant by any member of the grand jury, and the name must be kept secret by the Court until after the defendant has been placed in custody.

K.S.A. 62-927

K.S.A. 62-928

K.S.A. 62-929

K.S.A. 62-930

K.S.A. 62-931

XX. LIABILITY OF GRAND JURORS

A grand juror cannot be questioned for anything he or she may say during grand jury proceedings or with respect to his or her vote on any matter before the grand jury. An exception would be for a juror's own perjury where he or she is sworn as a witness and testifies.

XXI. POWER TO COMPEL WITNESS TO ATTEND AND TESTIFY

The grand jury has the power to cause witnesses to be summoned to appear before it and submit to examination under oath. It is sufficient in summoning a witness to apprise him

of the names of the parties whom or what he will be called to testify about, without indicating the nature of the charge against them.

The refusal to give testimony, unless such testimony is of a self-incriminating nature, or the giving of false testimony before the grand jury may constitute contempt which may be punished by the Court, or perjury which may be punished by prosecution. The grand jury has the power to have the County Attorney bring the witness before the Court to determine whether he shall be compelled to answer or be punished for contempt if he persists in his refusal to answer.

The grand jury has the power to subpoena business records that would normally be outside of any privilege granted. Such records may be considered by the jurors in reaching their decision on returning or not returning an indictment.

K.S.A. 62-916
K.S.A. 62-917
K.S.A. 62-918
K.S.A. 62-919
K.S.A. 62-920

XXII. RETURN OF INDICTMENTS AND SECRECY

Indictments must be returned before the Court in the presence of the grand jury. The statutes set forth the secrecy that is binding on each member of the grand jury.

No member is obliged or allowed to testify or declare in what manner he or any other member of the grand jury voted on any question before them or what opinions were expressed by any juror in relation to any such question. No grand juror shall disclose evidence given before the grand jury or names of any witnesses who appeared before them, except when lawfully required to testify as a witness in relation thereto; nor shall he disclose the fact of any indictment having been found against any person, not in actual confinement until the defendant shall have been arrested.

This rule of secrecy is not only a protection of the jurors and persons who are never indicted, but it is intended to prevent leakage of information which might make it difficult, if not impossible, to locate and arrest persons who are indicted. Any violation of the secrecy by a member of the grand jury, is not only a violation of a solemn oath, it is a crime and punishable as a misdemeanor.

K.S.A. 62-923

K.S.A. 62-924

K.S.A. 62-925

XXIII GRAND JURY DUTIES TO INSPECT COUNTY JAIL

A special duty of the grand jury is to make an inspection

of the county jail and report to the County Commissioners as to their findings.

K.S.A. 19-1902

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Article 9.—GRAND JURIES

Cross References to Related Sections:

Drawing of grand and petit jurors, see 43-107 *et seq.*

Instructions in restraint of trade cases, see 50-120.

62-901. Selection and summoning of grand jurors; petition by taxpayers. A grand jury shall hereafter be ordered drawn and summoned to attend at a term of the district court of any county only as hereinafter provided. In each organized county a grand jury shall be ordered drawn and summoned to attend at a term of the district court of any county when a petition praying for said grand jury, and signed by taxpayers of said county as herein provided, shall be presented to the judge of the district court of said county at least forty days before the commencement of

the term of court at which such grand jury may be desired by said petitioners. The number of the taxpayers of the county wherein a grand jury is desired who must sign a petition praying for such grand jury is hereby fixed as follows:

In a county having a population of less than five thousand, the number must be at least one hundred;

in a county having a population of five thousand or more and less than ten thousand, the number must be at least two hundred; and

in a county having a population of ten thousand or more, and less than fifty thousand, the number must be at least four hundred;

in a county having a population of fifty thousand, or over, the number must be at least seven hundred.

For the purpose of this act, the population of any county shall be determined by the enumeration made by the township and city assessors of such county during the year next preceding the year when such petition for a grand jury may be presented. [G. S. 1868, ch. 82, § 73; L. 1887, ch. 167, § 1; L. 1889, ch. 153, § 1; L. 1901, ch. 235, § 1; R. S. 1923, 62-901; L. 1935, ch. 227, § 1; May 15.]

Research and Practice Aids:

Hatcher's Digest, Grand Juries §§ 5 to 8.

Kinds of crime, Kansas Practice Methods § 1822.

CASE ANNOTATIONS

Annotation to G. S. 1868, ch. 82, § 73:

1. Defect in organization not implying corruption; *de facto* grand jury. The State v. Marsh, 13 K. 596.

Annotations to L. 1889, ch. 153, § 1:

2. Grand jury; L. 1887, ch. 167, and L. 1889, ch. 153, construed. *In re Tillery, Petitioner*, 43 K. 188, 190, 23 P. 162.

3. Defects in organization; jury trial legal on plea in abatement. The State v. Donaldson, 43 K. 431, 23 P. 650.

Annotation to L. 1901, ch. 235, § 1:

4. Plea in abatement not entertained, unless irregularity amounts to corruption. The State v. Turner, 63 K. 233, 234, 65 P. 217.

Annotations to L. 1935, ch. 227, § 1:

5. Grand jury may be called only on presentation of a petition. *In re Frye*, 173 K. 392, 393, 394, 396, 246 P. 2d 313.

6. Grand jury not legal entity after end of term for which called. *In re Frye*, 173 K. 392, 393, 394, 396, 246 P. 2d 313.

7. Judge cannot extend term of grand jury. *In re Frye*, 173 K. 392, 393, 394, 396, 246 P. 2d 313.

8. Mentioned; state's right to appeal under 62-1703 cannot be enlarged. State v. Ramirez, 175 K. 301, 302, 263 P. 2d 239.

62-902. Order for grand jury; selection. Upon the presentation to the district judge of the proper county of a petition praying for a grand jury, as provided in this act, said judge shall order a grand jury to be drawn and summoned in the same manner as petit jurors for the district court, to attend at the term of court for which said grand jury is desired by the petitioners. [L. 1901, ch. 235, § 2; May 1; R. S. 1923, 62-902.]

Research and Practice Aids:

Hatcher's Digest, Grand Juries §§ 5 to 8.

CASE ANNOTATIONS

1. Procedure for drawing and summoning grand juries discussed. *State v. Millhaubt*, 144 K. 574, 576, 61 P. 2d 1356.

2. Grand jury exists only during the term for which it was called. *In re Frye*, 173 K. 392, 394, 395, 246 P. 2d 313.

62-903. [L. 1901, ch. 235, § 3; R. S. 1923, 62-903; Repealed, L. 1951, ch. 353, § 1; June 30.]

62-904. Number of grand jurors; foreman; talesmen. There shall be fifteen grand jurors summoned and sworn on any grand jury, and from the persons summoned to serve as grand jurors, and appearing, the judge of the court shall appoint a foreman; and in every case when any person appointed foreman shall be discharged or excused before the grand jury shall be dismissed, the judge shall appoint a foreman in his place. In case any grand juror fails to attend, or is discharged, his place shall be filled by a talesman, to be selected by the judge. [G. S. 1868, ch. 82, § 74; L. 1887, ch. 167, § 2; March 2; R. S. 1923, 62-904.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 3, § 1; Terr. L. 1858, ch. 12, art. 4, § 1; Terr. L. 1859, ch. 27, § 57.

Research and Practice Aids:

Hatcher's Digest, Grand Juries §§ 4, 5.

CASE ANNOTATIONS

Annotation to G. S. 1868, ch. 82, § 74:

1. Selection of talesman; irregularity held not to amount to corruption. *The State v. Copp*, 34 K. 522, 9 P. 233.

Annotations to L. 1887, ch. 167, § 2:

2. Defects in organization; jury held legal on plea in abatement. *The State v. Donaldson*, 43 K. 431, 433, 23 P. 650.

3. Irregularity in selection did not constitute corruption; plea in abatement overruled. *State v. Millhaubt*, 144 K. 574, 576, 61 P. 2d 1356.

62-905. Oath of foreman. An oath or affirmation shall be administered to the foreman of the grand jury, in substance as follows:

"You, as foreman of the grand jury, shall diligently inquire, and true presentment make, of all public offenses against the laws of this state cognizable by this court, committed or triable within this county, of which you have or can obtain legal evidence. You shall present no person through malice, hatred or ill will, nor leave any unpresented through fear, favor or affection, or for any reward or the promise or hope thereof, but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding." [G. S. 1868, ch. 82, § 75; Oct. 31; R. S. 1923, 62-905.]

Source or prior law: Terr. L. 1859, ch. 27, § 58.

Research and Practice Aids:

Hatcher's Digest, Grand Juries §§ 5, 6; Juries § 46.

Oath,

Grand jury foreman, Vernon's Kansas Forms § 8301.

Grand jurors, Vernon's Kansas Forms § 8302.

CASE ANNOTATIONS

1. Grand jury charged and sworn becomes a *de facto* jury. *The State v. Marsh*, 13 K. 596, 599.

2. Duty of grand jury under oath stated. *The State v. Skinner*, 34 K. 256, 265, 8 P. 420.

3. Oath in substantial conformity herewith, held sufficient. *The State v. Allen*, 63 K. 598, 601, 66 P. 628.

62-906. Oath of other grand jurors. The following oath or affirmation must thereupon be administered to the other grand jurors present:

"The same oath or affirmation, which your foreman has taken now before you on his part, you and each of you shall well and truly observe on your part." [G. S. 1868, ch. 82, § 76; Oct. 31; R. S. 1923, 62-906.]

Source or prior law: Terr. L. 1859, ch. 27, § 59.

Research and Practice Aids:

Hatcher's Digest, Grand Juries §§ 5, 6; Juries § 46.

CASE ANNOTATIONS

1. Grand jury charged and sworn becomes a *de facto* jury. *The State v. Marsh*, 13 K. 596, 599.

2. Duty of grand jury under oath stated. *The State v. Skinner*, 34 K. 256, 265, 8 P. 420.

3. Oath in substantial conformity herewith, held sufficient. *The State v. Allen*, 63 K. 598, 601, 66 P. 628.

62-907. Objection to competency of grand juror. Any person held to answer to a criminal charge may object to the com-

petency of any one summoned to serve as a grand juror before he is sworn, on the ground that he is the prosecutor or complainant upon any charge against such person, or that he is a witness on the part of the prosecution, and has been summoned, or bound in a recognizance as such; and if such objection be established, the person so challenged shall be set aside. [C. S. 1868, ch. 82, § 77; Oct. 31; R. S. 1923, 62-907.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 3, § 2; Terr. L. 1859, ch. 27, § 60.

62-908. Same; other challenges not allowed. No challenge to the array of grand jurors, or to any person summoned as a grand juror, shall be allowed in any other cases than such as are specified in the last section. [C. S. 1868, ch. 82, § 78; Oct. 31; R. S. 1923, 62-908.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 3, § 3; Terr. L. 1859, ch. 27, § 61.

62-909. Plea in abatement. No plea in abatement or other objection shall be taken to any grand jury duly charged and sworn, for any alleged irregularity in their selection, unless such irregularity in the opinion of the court amounts to corruption, in which case such plea or objection shall be received. [C. S. 1868, ch. 82, § 79; Oct. 31; R. S. 1923, 62-909.]

Research and Practice Aids:
Hatcher's Digest, Criminal Law § 96.

CASE ANNOTATIONS

1. Irregularity in selection not amounting to corruption; indictment not quashed. *The State v. Lowe*, 6 K. A. 110, 50 P. 912; *The State v. Marsh*, 13 K. 596, 599; *The State v. Skinner*, 34 K. 256, 8 P. 420; *The State v. Copp*, 34 K. 522, 526, 9 P. 233; *The State v. Donaldson*, 43 K. 431, 432, 23 P. 650; *The State v. Turner*, 63 K. 233, 65 P. 217.

2. Plea in abatement must be certain to every intent; presumptions. *The State v. Lewis*, 77 K. 801, 90 P. 763.

3. Irregularity in selection held not to constitute corruption. *State v. Millhaub*, 144 K. 574, 578, 61 P. 2d 1356.

62-910. Oaths of witnesses. The foreman of every grand jury from the time of his appointment to his discharge shall be authorized to administer any oath, declaration or affirmation, in the manner prescribed by law, to any witness who shall appear before such grand jury for the purpose of giving evidence in any matter cognizable by them. [C. S. 1868, ch. 82, § 80; Oct. 31; R. S. 1923, 62-910.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 3, § 4; Terr. L. 1859, ch. 27, § 62.

62-911. Clerk and minutes. Every grand jury may appoint one of their number to be a clerk thereof, to preserve minutes of their proceedings and of the evidence given before them, which minutes shall be given to the attorney prosecuting in the county, when so directed by the grand jury. [C. S. 1868, ch. 82, § 81; Oct. 31; R. S. 1923, 62-911.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 3, § 5; Terr. L. 1859, ch. 27, § 63.

62-912. Stenographer; transcript and notes. Every duly impaneled grand jury may appoint a stenographer, who at the direction of said grand jury shall take in shorthand the evidence given before said grand jury and shall transcribe the same when so directed by the grand jury; said transcript together with the minutes of said meeting shall be given to the prosecuting attorney of the proper county. [L. 1915, ch. 192, § 1; Feb. 23; R. S. 1923, 62-912.]

62-913. Compensation of stenographer. That such stenographer shall receive five dollars (\$5) per diem for the time actually employed as full compensation for his services, to be paid by the county. [L. 1915, ch. 192, § 2; Feb. 23; R. S. 1923, 62-913.]

62-914. Duty of county prosecuting attorney. Whenever required by any grand jury it shall be the duty of the attorney prosecuting in the county to attend them for the purpose of examining witnesses in their presence, or giving them advice upon any legal matter. [C. S. 1868, ch. 82, § 82; Oct. 31; R. S. 1923, 62-914.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 3, § 6; Terr. L. 1859, ch. 27, § 64.

Research and Practice Aids:

District and Prosecuting Attorneys—8.

Hatcher's Digest, Grand Juries § 1.

C. J. S. District and Prosecuting Attorneys §§ 10, 14.

CASE ANNOTATIONS

1. Deputy county attorney may appear before grand jury. *The State v. Lowe*, 6 K. A. 110, 50 P. 912.

2. Defendant cannot, by county attorney, show offense for which indicted. *The State v. Skinner*, 34 K. 256, 8 P. 420.

62-915. Same; may give information and interrogate witness. Such attorney shall be allowed at all times to appear before the grand jury, on his request, for the purpose of giving information relative to any matter cognizable by them, and may be permitted to interrogate

witnesses before them when they or he shall deem it necessary; but no such attorney, or any other officer or person except the grand jurors shall be permitted to be present during the expression of their opinions or the giving their votes on any matter before them. [G. S. 1868, ch. 82, § 83; Oct. 31; R. S. 1923, 62-915.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 3, § 7; Terr. L. 1859, ch. 27, § 65.

Research and Practice Aids:

Hatcher's Digest, Grand Juries § 1.

CASE ANNOTATIONS

1. Deputy county attorney may appear before grand jury. The State v. Lowe, 6 K. A. 110, 50 P. 912.

2. County attorney may appear before grand jury on his request. The State v. Skinner, 34 K. 256, 265, 8 P. 420.

3. Right of attorney general and assistants to appear before grand jury. The State v. Crilly, 69 K. 802, 806, 77 P. 701.

62-916. Subpoena of witnesses. Whenever thereto required, by any grand jury or the foreman thereof, or by the prosecuting attorney, the clerk of the court in which such jury is impaneled shall issue subpoenas and other process to bring witnesses to testify before such grand jury. [G. S. 1868, ch. 82, § 84; Oct. 31; R. S. 1923, 62-916.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 3, § 8; Terr. L. 1859, ch. 27, § 66.

Research and Practice Aids:

Witnesses²1.

C. J. S. Witnesses § 2 et seq.

CASE ANNOTATIONS

1. Right of attorney general and assistants to subpoena witnesses. The State v. Crilly, 69 K. 802, 806, 77 P. 701.

62-917. Same; proceedings upon failure to appear and testify. If any witness duly summoned to appear and testify before a grand jury shall fail or refuse to obey, the court shall cause compulsory process to be issued to enforce his attendance, and may punish the delinquent in the same manner and upon like proceedings as provided by law for disobedience of a subpoena issued out of such court in other cases. [G. S. 1868, ch. 82, § 85; Oct. 31; R. S. 1923, 62-917.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 3, § 9; Terr. L. 1859, ch. 27, § 67.

62-918. Same; refusal to answer interrogatories. If any witness appearing before a grand jury shall refuse to testify or to answer any interrogatories in the course of his

examination, the fact shall be communicated to the court in writing, on which the question refused to be answered shall be stated, and the court shall thereupon determine whether the witness is bound to answer or not, and the grand jury shall be immediately informed of the decision. [G. S. 1868, ch. 82, § 86; Oct. 31; R. S. 1923, 62-918.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 3, § 10; Terr. L. 1859, ch. 27, § 68.

62-919. Same; proceedings against such witness, when. If the court determine that the witness is bound to answer, and he persist in his refusal to testify, he shall be brought before the court, who shall proceed therein in the same manner as if the witness had been interrogated and refused to answer in open court. [G. S. 1868, ch. 82, § 87; Oct. 31; R. S. 1923, 62-919.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 3, § 11; Terr. L. 1859, ch. 27, § 69.

62-920. Same; commitment for contempt, recognizance. If any such witness shall be committed for a contempt on account of his refusal to testify, and shall persist in such refusal until the grand jury is dismissed, or until the expiration of his imprisonment, he shall not be discharged until he enter into the recognizance with sufficient security for his appearance at the next term of the court and not to depart such court without leave. [G. S. 1868, ch. 82, § 88; Oct. 31; R. S. 1923, 62-920.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 3, § 12; Terr. L. 1859, ch. 27, § 70.

62-921. Special grand jury during same term. If any offense be committed or discovered during the sitting of any court, after the grand jury attending such court shall be discharged, such court may in its discretion, by an order to be entered on its minutes, direct the sheriff to summon another grand jury to attend the same term. [G. S. 1868, ch. 82, § 89; Oct. 31; R. S. 1923, 62-921.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 3, § 13; Terr. L. 1859, ch. 27, § 71.

Research and Practice Aids:

Grand Jury²26.

Hatcher's Digest, Grand Juries §§ 5, 6.

C. J. S. Grand Juries § 34.

CASE ANNOTATIONS

1. Grand jury called by judge in vacation, held *de facto* jury. The State v. Marsh, 13 K. 596, 599.

62-922. Same; summons and proceedings. The sheriff shall accordingly forthwith

summons such grand jury from the inhabitants of the county qualified to serve as grand jurors, who shall be returned and sworn, and shall proceed in the same manner in all respects as provided by law in respect to other grand juries. [G. S. 1868, ch. 82, § 90; Oct. 31; R. S. 1923, 62-922.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 3, § 14; Terr. L. 1859, ch. 27, § 72.

62-923. Testimony by grand juror. Members of the grand jury may be required by any court to testify whether the testimony of a witness examined before such grand jury is consistent with or different from the evidence given by such witness before such court; and they may also be required to disclose the testimony given before them by any person upon a complaint against such person for perjury, or upon his trial for such offense. [G. S. 1868, ch. 82, § 91; Oct. 31; R. S. 1923, 62-923.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 3, § 15; Terr. L. 1859, ch. 27, § 73.

Research and Practice Aids:

Grand Jury \Rightarrow 41.

Hatcher's Digest, Grand Juries § 1; Witnesses § 87.
C. J. S. Grand Juries § 43.

CASE ANNOTATIONS

1. Defendant cannot, by witnesses, show offense for which indicted. *The State v. Skinner*, 34 K. 256, 8 P. 420.

2. When proceedings before grand jury may be proved. *The State v. Campbell*, 73 K. 688, 702, 85 P. 784.

62-924. Juror not allowed to state how any member voted or what opinions were expressed. No member of a grand jury shall be obliged or allowed to testify or declare in what manner he or any other member of the grand jury voted on any question before them, or what opinions were expressed by any juror in relation to any such question. [G. S. 1868, ch. 82, § 92; Oct. 31; R. S. 1923, 62-924.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 3, § 16; Terr. L. 1859, ch. 27, § 74.

Research and Practice Aids:

Hatcher's Digest, Grand Juries §§ 2, 3.

CASE ANNOTATIONS

1. Defendant cannot, by witnesses, show offense for which indicted. *The State v. Skinner*, 34 K. 256, 8 P. 420.

2. Defendant cannot show what witness testified to before grand jury. *The State v. Schmidt*, 34 K. 399, 8 P. 867.

3. Grand jury not permitted to state who voted for indictment. *The State v. Standish*, 37 K. 643, 16 P. 66.

62-925. Unlawful disclosures by jurors; misdemeanor. No grand juror shall disclose any evidence given before the grand jury, nor the name of any witness who appeared before them, except when lawfully required to testify as a witness in relation thereto; nor shall he disclose the fact of any indictment having been found against any person for felony, not in actual confinement, until the defendant shall have been arrested thereon. Any juror violating the provisions of this section shall be deemed guilty of a misdemeanor. [G. S. 1868, ch. 82, § 93; Oct. 31; R. S. 1923, 62-925.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 3, § 17; Terr. L. 1859, ch. 27, § 75.

Research and Practice Aids:

Grand Jury \Rightarrow 43.

Hatcher's Digest, Grand Juries §§ 2, 3.

C. J. S. Grand Juries § 45.

CASE ANNOTATIONS

1. Section not limited by provisions of 62-923, criminal code. *The State v. Campbell*, 73 K. 688, 702, 85 P. 784.

2. When proceedings of grand jury may be proved. *The State v. Campbell*, 73 K. 688, 702, 85 P. 784.

62-926. Same; instructions as to disclosures. In charging grand juries, the court shall apprise them of the provisions of the last three sections in relation to disclosures, and in what cases and under what circumstances any disclosures may or may not be made. [G. S. 1868, ch. 82, § 94; Oct. 31; R. S. 1923, 62-926.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 3, § 18; Terr. L. 1859, ch. 27, § 76.

62-927. Finding of indictment; true bill. No indictment can be found without the concurrence of at least twelve grand jurors. When so found, and not otherwise, the foreman of the grand jury shall endorse it thus: "A true bill.—A. B., foreman." [G. S. 1868, ch. 82, § 95; Oct. 31; R. S. 1923, 62-927.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 3, § 19; Terr. L. 1858, ch. 12, art. 4, § 3; Terr. L. 1859, ch. 27, § 77.

Research and Practice Aids:

Hatcher's Digest, Grand Juries § 4.

CASE ANNOTATIONS

1. Evidence of concurrence; endorsement and signature of foreman. *Laurent v. The State*, 1 K. 313.

2. Absence of member; concurrence of twelve members sufficient. *The State v. Copp*, 34 K. 522, 9 P. 233.

62-923. Certificate by foreman when indictment not found. Where there is not a concurrence of twelve grand jurors in finding an indictment, the foreman shall certify under his hand that such indictment is "Not a true bill." [G. S. 1868, ch. 82, § 96; Oct. 31; R. S. 1923, 62-928.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 3, § 20; Terr. L. 1859, ch. 27, § 78.

Research and Practice Aids:

Hatcher's Digest, Grand Juries § 4.

CASE ANNOTATIONS

1. Concurrence of at least twelve grand jurors required. *The State v. Copp*, 34 K. 522, 529, 9 P. 233.

62-929. Return of indictments found. Indictments found by a grand jury shall be presented by their foreman in their presence to the court, and shall be filed, and remain as records of such court. [G. S. 1868, ch. 82, § 97; Oct. 31; R. S. 1923, 62-929.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 3, § 21; Terr. L. 1859, ch. 27, § 79.

Research and Practice Aids:

Hatcher's Digest, Grand Juries § 4; Indictment & Information § 2.

CASE ANNOTATIONS

1. Indictment presented in open court; presumed presented according to law. *Laurent v. The State*, 1 K. 313.

2. Record held to show indictment properly returned by grand jury. *Millar v. The State*, 2 K. 174.

3. Grand juror cannot state who did and who did not vote. *The State v. Standish*, 37 K. 643, 645, 16 P. 66.

4. Presumption that indictment was returned in open court. *The State v. Crilly*, 69 K. 802, 77 P. 701.

62-930. Indictment to be signed by prosecuting attorney and foreman. Each indictment must be signed by the prosecuting attorney; and when the grand jury return any indictment into court the judge must examine it, and if the foreman has neglected to endorse it "A true bill," with his name signed thereto, or if the prosecuting attorney has neglected to sign his name, the court must cause the foreman to endorse or the prosecuting attorney to sign it, as the case may require, in the presence of the jury. [G. S. 1868, ch. 82, § 98; Oct. 31; R. S. 1923, 62-930.]

Source or prior law: Terr. L. 1858, ch. 12, art. 4, § 4; Terr. L. 1859, ch. 27, § 84.

Research and Practice Aids:

Indictment and Information § 51(1).

Hatcher's Digest, County Attorneys §§ 12 to 14; Criminal Law § 77; Indictment & Information §§ 12 to 15.

C. J. S. Indictments and Informations § 84.

Indictment by grand jury, Vernon's Kansas Forms § 8303.

CASE ANNOTATIONS

1. Indictment signed by prosecuting attorney as "district attorney," held void. *Craft v. The State of Kansas*, 3 K. 450.

2. Mistake in signature held not ground for quashing indictment. *The State v. Tannahill*, 4 K. 117.

3. Presumption indictment was returned in open court. *The State v. Crilly*, 69 K. 802, 77 P. 701.

4. Assistant attorney general is authorized to sign indictment. *The State v. Crilly*, 69 K. 802, 77 P. 701.

5. Attorney general prosecuting criminal proceedings in a county may sign indictments. *The State v. Bowles*, 70 K. 821, 79 P. 726.

6. The words "a true bill" may be printed on the indictment. *The State v. Harlan*, 71 K. 887, 81 P. 480.

7. Necessity of signature of county attorney; section cited. *In re Broadhead*, 74 K. 401, 86 P. 458.

62-931. Names of witnesses endorsed on indictment. When an indictment is presented by the grand jury, the names of all the material witnesses known at the time to the public prosecutor must be endorsed upon the indictment, but the names of other witnesses may afterwards be endorsed on said indictment before or during the trial, as the court may by rule or otherwise prescribe, and said witnesses be subpoenaed by the state; but unless the names of such witnesses as were known to the public prosecutor before the commencement of the trial be endorsed on the indictment, no continuance shall be granted to the state on account of absence of any witness whose name is not thus endorsed. [G. S. 1868, ch. 82, § 99; L. 1887, ch. 167, § 3; March 2; R. S. 1923, 62-931.]

Source or prior law: Terr. L. 1858, ch. 12, art. 4, § 5; Terr. L. 1859, ch. 27, § 85.

Research and Practice Aids:

Indictment and Information § 53.

Hatcher's Digest, Criminal Law § 77.

C. J. S. Indictments and Informations § 85.

CASE ANNOTATIONS

Annotations to G. S. 1868, ch. 82, § 99:

1. Witness permitted to testify without endorsement of name; not error. *The State v. Dickson*, 6 K. 209, 219.

2. Name not endorsed on indictment; when objection must be raised. *The State v. Schmidt*, 34 K. 399, 8 P. 867.