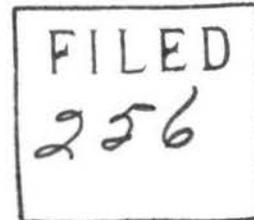


COUNTY COURT: In dividing county into county court  
JUDGE DISTRICTS: judge districts contiguously located,  
POPULATION: and as near equal in population as  
HOW EQUALIZED: practicable, under Section 49.010,  
RSMo 1959, county court in equalizing  
population of districts is required by Section 1.100, RSMo 1959,  
to use last preceding census report of United States for county.

June 24, 1969

OPINION NO. 256



Honorable G. William Weier  
Prosecuting Attorney  
Jefferson County  
Hillsboro, Missouri 63050

Dear Mr. Weier:

This official opinion is in response to your request for a ruling as to what measure of population should be used by the county court in redistricting the county court judge districts, under provisions of Section 49.010, RSMo 1959. Said section reads as follows:

"The county court shall be composed of three members, to be styled judges of the county court, and each county shall be districted by the county court thereof into two districts, of contiguous territory, as near equal in population as practicable, without dividing municipal townships."

Section 1.100, RSMo 1959, provides how the population of various subdivisions of the State, shall be determined, and reads as follows:

"1. The population of any political subdivision of the state for the purpose of representation or other matters including the ascertainment of the salary of any county officer for any year or for the amount of fees he may retain or the amount he is allowed to pay for deputies and assistants is determined on the basis of the last previous decennial census of the United States. For the purposes of this

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section the effective date of the 1960 decennial census of the United States is July 1, 1961, and the effective date of each succeeding decennial census of the United States is July first of each tenth year after 1961; except that for the purposes of ascertaining the salary of any county officer for any year or for the amount of fees he may retain or the amount he is allowed to pay for deputies and assistants the effective date of the 1960 decennial census of the United States is January 1, 1961, and the effective date of each succeeding decennial census is January first of each tenth year after 1961.

2. Any law which is limited in its operation to counties, cities or other political subdivisions, having a specified population or a specified assessed valuation, shall be deemed to include all counties, cities or political subdivisions which thereafter acquire such population or assessed valuation as well as those in that category at the time the law passed."

The courts have long taken judicial notice of the census reports, and recognized them as the sole means for determining the population. It is believed the court stated the general rule in this respect, in Varble v. Whitecotton, 190 SW2d 244, in which it said at l.c. 246:

" . . . This court has always taken judicial notice of 'the official records of the census' and we find no case where the fact of population has been proved by other means. . . . "

Again, in Hardin v. Jefferson County, 147 SW2d 643, the question before the court was whether or not the county had sufficient population to authorize the county judges to constitute a board of road overseers under a certain statute. At l.c. 644, the court said:

"The legislature provided no special statutory method to determine the population of a county under Sec. 7892. Absent such a method, the question of

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population is fixed by the last decennial census, which is the census of 1930. . . . Thus it appears that the county judges of Jefferson County in 1931 did not constitute a Board of Road Overseers under Sec. 7892. If so, the county did not owe the plaintiff \$1,200 annual salary fixed by said section for services as a member of said board."

In view of the fact that Section 49.010, supra, provides no method by which the county court is to determine and equalize the population of the prospective county judge districts, it is believed that the holdings in above cited cases relative to census reports, and also provisions of Section 1.100, supra, are applicable. It is further believed that said Section 1.100, supra, requiring the use of the last United States decennial census report for certain purposes, including that of representation, is particularly applicable to the matter of inquiry. A matter of representation is involved here, as a county judge will be elected to represent the citizens of each district on the county court. Consequently, under provisions of said section, the last decennial census report of the United States of the population of Jefferson County shall be used by the county court in equalizing as nearly as practicable the population of the county court districts under provisions of Section 49.010, supra.

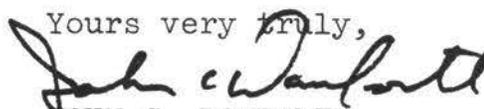
We are enclosing Opinions No. 166 rendered March 30, 1965, to Gerald Kiser; No. 114 rendered March 30, 1965, to Clifford A. Falzone; No. 427 rendered December 27, 1962, to Larry M. Woods; and No. 5 rendered June 19, 1952, to Charles V. Barker which may be helpful to you.

#### CONCLUSION

Therefore, it is the opinion of this office that in dividing the county into two county court judge districts, of contiguous territory and as near equal in population as practicable, under provisions of Section 49.010, RSMo 1959, the county court, in equalizing the population of the districts should use the last preceding decennial census report of the United States for the county.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Paul N. Chitwood.

Yours very truly,



JOHN C. DANFORTH  
Attorney General