

February 11, 1933.

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Hon. Leo A. Politte
Prosecuting Attorney
Franklin County
Union, Missouri

Dear Mr. Politte:

Your letter directed to the Attorney General was handed the undersigned for attention. You asked for the construction of Section 9806, R. S. Mo. 1929, as amended by laws of Missouri 1931, P. 358, and in connection therewith state the following:

"Will you kindly give me a ruling on the compensation allowed the assessor of Franklin County for the year 1932? The population of Franklin County according to the 1920 census was slightly lower than 30,000. According to the census of 1930 the Franklin County population was in excess of 31,000.

The question is whether or not he is entitled to thirty-five (35¢) cents per list or only thirty (30¢) cents per list."

Section 9806 R. S. Mo. 1929, provides,

"The compensation of each assessor shall be thirty-five cents per list in counties having a population not exceeding thirty-thousand; thirty cents per list in counties having a population of more than thirty-thousand, *-----"

The general assembly amended the above section, Laws 1931, P. 358, by providing that the compensation of the assessor shall be thirty-five cents per list in counties having a population not exceeding 40,000.

The legislature, for the purpose of ascertaining the population of a county, enacted what is now Section 11808, R. S. Mo. 1929. It is a general section and intended to be the basis of determining the salary, fees and compensation of all county officers and when no special provision has been made with

respect to any particular office, this section is resorted to for the purpose of determining the population. It specifically provides that,

"For the purpose of determining the population of any county in this state, as a basis for ascertaining the salary of any county officer for any year, or the amount of fees he may retain, ***** the highest number of votes cast at the last previous general election, ***** shall be multiplied by five, and the result shall be considered and held for the purpose aforesaid as the true population of such county."

Section 9806, supra, relating to county assessors, is silent as to the manner of ascertaining the population for the purpose of fixing his fees. The Federal census is not an official or legislative act of the State of Missouri, and in the absence of a legislative act adopting it as a basis for ascertaining population, we are of the opinion that the legislative intent was to employ the method provided in Section 11808 R. S. Mo. 1929, to ascertain the population rather than the adoption of the Federal census.

Section 8, Article 14 of the Constitution provides as follows:

"The compensation or fees of no State, county or municipal officer shall be increased during his term of office; nor shall the term of any office be extended for a longer period than that for which such officer was elected or appointed."

It will be noted that this inhibition prohibits an increase in salary or fees during tenure of office. The Supreme Court has repeatedly held that under this provision the fees or compensation of a state, county or municipal officer during his term of office cannot be increased.

State ex rel v. Gordon 250 Mo. 471 l. c. 476.

State ex rel v. Jost 269 Mo. 248 l. c. 258.

Under the provision of Section 9806, R. S. Mo. 1929, when the population of the county exceeded 30,000, the fees which the assessor should receive for assessment lists would be thirty cents per list.

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It is our opinion that the amendment to this law, Session Act 1931, P. 351, did not affect the fee of the assessor for the assessment made for the year 1932, but the fees to which he would be entitled would be based upon the statute in force at the date of his election. We assume that he was elected in the year of 1928 and for a term of four years, as was provided for by Section 9749, R. S. Mo. 1929.

Referring again to Section 11808 R. S. Mo. 1929, under which the population is ascertained for the purpose of determining salary or fees, it is noted that it employs the words "general election". Section 655 R. S. Mo. 1929, provides that the construction of all statutes of this State shall be by the rule set out in such statute, unless such construction is plainly repugnant to the intent of the legislature or the context of the statute. The 16th clause of the statute defines "general election" as follows:

"The term "general election" refers to the election required to be held on the Tuesday succeeding the first Monday of November, biennially;"

Following then the direction set forth in the above sections, it is our opinion that the population for the purpose of ascertaining the fee of the assessor for the 1932 assessment should be ascertained from the result of the vote cast in the general election, taking the highest vote cast thereat and multiplying same by five. Such method meets the requirement of Section 12, Article 9, Missouri Constitution, because it operates uniformly as to a particular class. We are further of the opinion that the amended law appearing in the 1931 Session Act would not affect the fees during the term of the then incumbent of the assessor's office. The fee of the assessor might be increased, or decreased, during the term of his office, dependent upon an increased or decreased population, thereby materially changing his duties, and such increase in that event would not be violative of the constitutional inhibition against an increase of salary during tenure of office; such increase cannot, however, be made by legislative enactment. If the assessor's fees would be affected by the election result in the general election of the year 1930, it being a general election, the result might be used as a calculation for ascertaining the increased or decreased population, if any. Should the fees of the assessor be increased thereby, such increase, as hereinabove stated, would not be violative of the constitutional inhibition against

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increase of salary during his term.

Yours very truly,

CARL C. ABINGTON
Assistant Attorney General.

APPROVED: _____

ROY McKITTRICK
Attorney General.

CCA:EG