

OPINION: COUNTY COURTS - SALARIES OF COUNTY COURT JUDGES, ELECTED
in 1930, 1932 and 1934 - HOW ASCERTAINED.

107.02
V31
January 26, 1934.

Honorable Chas. M. Hardin
County Court Judge
De Soto, Missouri.



Dear Sir:

We have your inquiry of January 17,
stating:

"I am writing you for an opinion on Sec. 7892 relating to County Courts constituting Board of road overseers in certain counties. Jefferson County has about five times the required mileage of hard surfaced roads and prior to last year had more than 25 million dollars of taxable wealth. The population according to the last U. S. census was about 28000. However prior to that census all other Jefferson County officers were serving a population determined by Sec. 11808. which ran the population as high as sixty five thousand. My question, your Honor, is whether or not the county court could use the same Sec. for determining the counties population. for proof of our claim for the salary provided for in Sec. 7892. * * *

For convenience, we will divide this opinion into the following divisions:

1. Salaries of County Judges elected in 1930.
2. Salaries of County Judges elected in 1932.
3. Salaries of County Judges elected in 1934.

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I

SALARIES OF COUNTY
JUDGES ELECTED IN
1930.

County judges, elected at the general election in 1930, took office on January 1, 1931 - Section 2073, R. S. 1929. The district judges under this section were elected for two year terms and the presiding judge for a four year term.

The salary of each county judge for his entire term is to be determined by the law in force at the time he took office, January 1, 1931. Briefly these statutes are as follows:

Section 2093 - R. S. 1929,
Section 7892 - R. S. 1929.

These statutes definitely fix the compensation a county judge is entitled to receive for his full term. In counties with a population of less than fifty thousand, he shall receive a salary of five dollars per day for each day necessarily engaged in holding court. In all counties containing a population of more than fifty thousand and less than sixty thousand, and which under the terms of Section 7892, R. S. 1929, also contain more than two hundred miles of macadamized or rock public roads, and which also had a total taxable wealth of over twenty-five million dollars and not containing a city of the first class, the county judge shall receive five dollars per day for each day necessarily engaged in holding court, plus a salary of twelve

hundred dollars per year as a member of the Board of Road Overseers. In all counties containing a population of over sixty thousand and less than ninety thousand inhabitants, the county court judge is to receive the salary provided for in Section 2092, R. S. 1929.

The method of determining the population, under either of the above statutes, is found in Section 11808, which reads as follows:

"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, or the amount he shall be allowed to pay for deputies or assistants, the highest number of votes cast at the last previous general election, whether heretofore or hereafter held in such county, for any office, shall be multiplied by five, and the result shall be considered and held for the purpose aforesaid as the true population of such county.

The law fixing the salary of a county judge cannot be altered or changed so as to increase or decrease his salary during his term. Article VI., Section 36 of the Missouri Constitution provides:

"In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law. The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law."

Article VI., Section 33, of the Missouri Constitution provides:

"The judges of the Supreme, Appellate and Circuit Courts, and of all other courts of record receiving a salary, shall, at stated times, receive such

compensation for their services as is or may be prescribed by law; but it shall not be increased or diminished during the period for which they were elected."

While the law fixing the county court judge's salary cannot be so altered or changed so as to increase or diminish his compensation during the term of office, his salary is primarily determined by the size of his county, and his county may pass from one class to another in population; that is, the population of the county may be increased or decreased by an intervening general election held during his term of office. Under such circumstances, the compensation of the county judge may be changed - either raised or lowered due to the fact that his county has passed from one population to a higher or lower population. This principle is fully recognized in State ex rel. Moss v. Hamilton, 260 S. W. 466 (1934).

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II.

SALARIES OF COUNTY JUDGES ELECTED IN 1932.

County judges, taking office January 1, 1933, are drawing compensation under Section 7892, R. S. 1929, and Laws of 1931, page 190. The 1931 Legislature repealed Section 2092, R. S. 1929, and enacted a new section in lieu thereof, the only change made was the substitution of seventy-five thousand inhabitants for the figure sixty thousand inhabitants in the old section. These two sections definitely fix the law for the compensation of county judges during their entire term of office.

Under these sections, in counties of less than fifty thousand population, the compensation is fixed at five dollars per day for each day necessarily engaged in holding court. In counties of fifty thousand population and less than seventy-five thousand population, and which have more

than two hundred miles of macadamized or rock public roads, and a total taxable wealth of over twenty-five million dollars, and not containing a city of the first class, the compensation is fixed at five dollars per day for each day necessarily engaged in holding court, plus a salary of twelve hundred dollars per year as member of the Board of Road Overseers. And, in all counties containing a population of seventy-five thousand and less than ninety thousand inhabitants, a specific salary of twenty-five hundred dollars per year is fixed by the Laws of 1931, at page 190.

The population is to be ascertained under the provisions of Section 11808, R. S. 1929, set out in full above. The total votes cast in the general election of 1932 would be used to determine the salaries for the years 1933 and 1934.

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III.

SALARIES OF COUNTY JUDGES ELECTED IN 1934.

These officers will take office January 1, 1935, and their compensation will be fixed by Section 7892, R. S. 1929, and Laws of 1933, page 304, page 309, and page 370.

Under these statutes, in counties of less than fifty thousand population, a county judge would be entitled to the five dollar per diem. In counties containing fifty thousand and less than seventy-five thousand population, with two hundred miles of macadamized or rock public roads, and with an assessed valuation of twenty-five million dollars, and not containing a city of the first class, the compensation of the county judge is fixed at twelve hundred dollars per year, in addition to the five dollar per day paid him for each day necessarily engaged in holding court. In all counties containing seventy-five thousand and less than ninety thousand inhabitants, the county judge will receive a salary of twenty-five hundred dollars per year.

The population for paying the county judge is fixed

by Section 2092-A, Laws 1933, page 209, which is as follows:

"Sec. 2092a. Last decennial census to determine population. - That the number of inhabitants of any county for the purpose of the above section 2092 shall be ascertained by the last decennial census of the United States."

The previous section, 11808 - R. S. 1929, basing the population upon five times the last general election vote has been repealed and a new section enacted in lieu thereof, common laws of Missouri, 1933, page 370, which reads as follows:

"Sec. 11808. Last decennial census to determine population. - The last previous decennial census of the United States shall be the basis for determining the population of any county in this state, for the purpose of ascertaining the salary of any county officer for any year, or the amount of fees he may retain, or the amount he shall be allowed to pay for deputies or assistants.

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CONCLUSION.

It is therefore the opinion of this office that the method of determining the population for the purposes of Sections 7892 and 2092, R. S. 1929, for the purpose of ascertaining the amount of compensation the county judge is entitled to receive for the years 1931, 1932, 1933 and 1934, is to be determined under the provisions of Section 11808, R. S. Mo. 1929, namely by multiplying the total number of votes cast at the last preceding general election by five;

that the compensation of county judges for the years 1935 and 1936, is to be based upon a population ascertained by the last (1930) decennial census of the United States.

Yours very truly,

FRANKLIN E. REAGAN
Assistant Attorney-General.

APPROVED:

ROY MCKITTRICK
Attorney-General.

FER/J