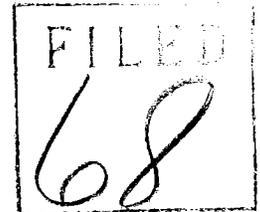


CLERK OF CIRCUIT COURT: Salary change effected by 1940
census begins January 1, 1941.

January 20, 1941

Honorable Forrest Ott, Clerk
Circuit Court
Harrisonville, Missouri



Dear Sir:

This will acknowledge receipt of your letter of January 15, 1941, in which you asked for an opinion as follows:

"In the recent opinion concerning salaries of Circuit Clerks, the 'Conclusion' reads as follows:

"It is the opinion of this department that the circuit clerk, prosecuting attorney and other county officers affected by the decrease or increase of the population could only be paid in accordance with said increase or decrease at the beginning of the next fiscal year of his term after the population has been determined by the federal government, and that no increase be allowed or decrease be ordered before the first day of the fiscal year following the year of 1940."

"Local newspapers today received a bulletin announcing the official population of Cass County to be 19,534, and at the top of the bulletin was the following, 'Released for publication by newspapers on January 9, 1941.' This will cause my salary to fall in a lower bracket, under 20,000.

"I would like to have your opinion about whether or not the decrease in my salary will begin now, in 1941, or not until January 1, 1942. As your conclusion states 'at the beginning of the next fiscal year of his term

January 20, 1941.

after the population has been determined by the federal government,' it appears to me as though our decrease may not take effect until January 1, 1942.

"We suppose that January 9, 1941, was the day the official population for Cass County was announced, but, of course, we would like for you to determine that. If possible, please let me know before I certify my salary for the month of January, 1941, down to the County Court for payment, as I do not wish to certify my old salary and then find I will have to refund a portion of it."

The law authorizing the taking of the census is found in Title 13, U.S.C.A., Accumulative Annual Pocket Part for 1940, and it is necessary to refer to certain sections of this act in order to determine your question. The sections necessary are the following, 206, 213, and 218.

"The census of the population and of agriculture required by section 201 of this title shall be taken as of the 1st day of April, and it shall be the duty of each enumerator to commence the enumeration of his district on the day following unless the Director of the Census in his discretion shall change the date of commencement of the enumeration in said district by reason of climatic or other conditions which would materially interfere with the proper conduct of the work; but in any event it shall be the duty of each enumerator to prepare the returns hereinbefore required to be made and to forward the same to the supervisor of his district within thirty days from the commencement of the enumeration of his district: Provided, that in any city having two thousand five hundred inhabitants or more under the preceding census the enumeration of the population shall be completed within two weeks from the commencement thereof."

"The Director of the Census is hereby authorized to make requisition upon the Public Printer for such printing as may be necessary to carry out the provisions of this chapter, to wit: Blanks, schedules, circulars, pamphlets, envelopes, work sheets, and other items of miscellaneous printing; that he is further authorized to have printed by the Public Printer, in such editions as the director may deem necessary, preliminary and other census bulletins, and final reports of the results of the several investigations authorized by this chapter or by chapters 1 and 3 of this title and to publish and distribute said bulletins and reports."

"The Director of the Census is authorized at his discretion, upon the written request of the governor of any State or Territory or of a court of record, to furnish such governor or court of record with certified copies of so much of the population or agricultural returns as may be requested, upon the payment of the actual cost of making such copies and \$1 additional for certification; and that the Director of the Census is further authorized, in his discretion, to furnish to individuals such data from the population schedules as may be desired for genealogical or other proper purposes, upon payment of the actual cost of searching the records and \$1 for supplying a certificate; and that the Director of the Census is authorized to furnish transcripts of tables and other records and to prepare special statistical compilations for State or local officials, private concerns, or individuals upon the payment of the actual cost of such work: Provided, however, That in no case shall information furnished under the authority of this chapter be used to the detriment of the person or persons to whom such information relates. All moneys hereafter received by the Bureau of the Census in payment for labor and materials used in furnishing transcripts of census records or special statistical compilations from such records shall be deposited to the credit of the appropriation for collecting statistics."

January 20, 1941.

The census is directed to be taken effective as of April 1, 1940; the taking of the census to be commenced the day following April 1, 1940, and to be concluded within thirty days. The director of the census is authorized to publish bulletins and to furnish upon the request of a Governor, or a court of record a certified copy of the population returns which may be requested. There is no formal date set for the publication of census reports, and the Courts of this State have never set a definite date when a general change of salary would be effective if a change in population caused a fluctuation of salary. The substance of the rulings on this question seems to be that as soon as the new population is available the compensation of officers should be based upon the new population, but that no salary adjustments should be made during a term year.

In the recent case of *Kay v. Moniteau County*, 134 S. W. (2d) page 81, a case in which the court paid the salary of the prosecuting attorney on the basis of the 1930 census although it was admitted at the trial that there was no official report of the census until 1936, which was several years after the payment of the salary. The Supreme Court at l. c. 83 said:

"Since the county court paid plaintiff the salary authorized under the census method, it is immaterial to plaintiff as to how the court acquired knowledge of the census. The census method was available and the court was bound under the law to be guided thereby."

And in the earlier case of *Carter County v. Huett*, 259 S. W. 1057, also a salary case in which the salary paid was based on the 1920 census, the Supreme Court said l. c. 1059:

"As to the fact that Carter county, as of the 1st day of January, 1920, had such a population as put it in the class whose prosecuting attorneys were entitled to receive a salary of \$1,000 per annum, there is and can be no dispute. The substance of plaintiff's contention is that this fact was not and legally could not have been ascertained, within the meaning of the statute, so as to make it applicable to the

January 20, 1941

salary of the prosecuting attorney for the year of 1920. There is nothing here showing an express or specific finding by the county court of the population of the county, but the making of orders for the issuance of warrants for the payment of the increased salary, involved an ascertainment of the existence of a population within a given minimum and maximum limit. The defendants, judges of the county court, in auditing and paying the salary of the prosecuting attorney, were in the exercise of their statutory authority, and it cannot be said as a matter of law, under the terms of the Census Act, or under the statute, that the population of the county was not ascertained, or that as a matter of law it could not have been ascertained by the decennial census of 1920 for the purpose of determining the salary paid. This is said as applicable to the case against all of the defendants herein."

This office has no information as to what knowledge the county court of Cass County has concerning the population of the county as shown by the 1940 census, or when it acquired such knowledge. The enumeration was completed more than seven months ago, and it is not only possible but highly probable that the county court had knowledge of the population long prior to January 9, 1941. And the population as ascertained by this census should be the basis for paying salaries as soon as available regardless of how the knowledge was obtained.

CONCLUSION.

It is the conclusion of this Department that the salary of the clerk of the circuit court of Cass County should be paid for the entire year of 1941, upon the population as determined by the 1940 census, which was taken as of April 1, 1940.

Respectfully submitted,

APPROVED:

W. O. JACKSON
Assistant Attorney-General

COVELL R. HEWITT
(Acting) Attorney-General

W. J. BULKE
Assistant Attorney-General

WOJ/WJB/mc